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NOMINATIONS TO POSITIONS AT THE ENVIRONMENTAL PROTECTION AGENCY

HEARINGS

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF TIMOTHY B. ATKESON TO BE ASSISTANT ADMINISTRATOR FOR INTERNATIONAL ACTIVITIES; LINDA FISHER, TO BE ASSISTANT ADMINISTRATOR FOR PESTICIDES AND TOXIC SUBSTANCES; J. CLARENCE DAVIES TO BE ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING, AND EVALUATION; E. DONALD ELLIOTT TO BE ASSISTANT ADMINISTRATOR (GENERAL COUNSEL); LAJUANA WILCHER, TO BE ASSISTANT ADMINISTRATOR FOR WATER; DON R. CLAY, TO BE ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE; AND JAMES M. STROCK, TO BE ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE MONITORING

JULY 27, OCTOBER 18, AND NOVEMBER 8, 1989

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NOMINATIONS TO POSITIONS AT THE ENVIRONMENTAL PROTECTION AGENCY

THURSDAY, JULY 27, 1989

U.S. Senate
Committee on Environment and Public Works,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senators Burdick, Lautenberg, Warner, Chafee, and Lieberman.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator Burdick. The Committee on Environment and Public Works will come to order.

This morning we are holding confirmation hearings on three nominees for Assistant Administrator positions at the Environment Protection Agency. We will hear them in the order of receipt of their nominations.

Timothy Atkeson has been nominated to become the Assistant Administrator for International Activities. Administrator Bill Reilly has seen fit to elevate this position from the previous Associate Administrator level. He has done this to recognize that some significant environmental issues—climate change, for example—are global in nature. Raising the level of this position will provide its occupant and our Nation a level of parity when meeting with foreign counterparts. I applaud the Administrator's foresight in this regard.

I wish to caution, however, that we must not lose sight of the needs of developing and Third World nations for assistance with everyday environmental problems. We simply must not allow ourselves to become focused solely on fashionable issues of our day.

We will hear from Linda J. Fisher, the nominee for Assistant Administrator for Pesticides and Toxic Substances. If confirmed, Ms. Fisher will have the important job administering pesticide and chemical control laws. She will also be in charge of the asbestos control program and will oversee the Agency's biotechnology efforts.

Finally, we will hear from Terry Davies, who has been nominated to become Assistant Administrator for Policy, Planning, and Evaluation. I recognize that the office Mr. Davies will head is a controversial one at EPA. The office is thought to be OMB's agent for EPA, responsible for thwarting congressional direction as expressed in the law over the years.

The Office of Pollution Prevention, or waste reduction, has been placed in the Policy and Planning Office. Given hostility directed to the office by EPA's program offices, I must question whether this is the appropriate place at this time for such an important programmatic function.

I welcome the three of you here today. We will hear from each of you after opening statements by Members.

The gentleman from Rhode Island.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator **Chafee**. Mr. Chairman, thank you very much.

First, I understand that you have an agriculture appropriation bill on the floor, so I would be glad to hold the hearing.

Secondly, I want to thank you very much for scheduling this hearing so quickly, and it is my understanding that we are going to meet again at 11 and, hopefully, have enough members present so we can vote on the nominees.

It is very important that we do this, and I want to say to you, Mr. Chairman, that this committee has rapidly considered all the nominees that have come up from the White House, and that is a great credit to you that we have been able to give Mr. Reilly his people and get them in order down there, which is not like other committees where they have had all these terrible holdups.

So no one can say this committee has help anybody up. They have been a long time in getting many of these nominees to us.

Senator **Burdick**. May I just say that it has all been made possible because of the cooperation of the gentleman from Rhode Island.

Senator **Chafee**. Well, we will catch these bouquets going back and forth here.

So I will carry on, and then we will meet again at 11. Do you think you will be able to be back at 11?

Senator **Burdick**. We will try.

Senator **Chafee**. All right, well, I hope we can.

Senator **Burdick**. If possible.

Senator **Chafee** [assuming Chair]. Thank you.

I want to welcome all the nominees here today, and as I mentioned, it is good to see that we are proceeding rapidly at this end of Pennsylvania Avenue, anyway, in getting these important positions at EPA filled.

Will all the nominees please come to the table?

First, I have a couple of comments regarding Ms. Fisher. You are going to have the important responsibility for improving procedures to ensure that pesticides do not contaminate our country's food supply or the environment. In addition, you have to promote the development of safe chemicals for distribution to the public and to reinvigorate the Toxic Substances Control Act so it can begin to perform as Congress wanted it to. The controversy over ALAR—what is the correct pronunciation of that? That is your first question.

Ms. **Fisher**. Senator, I have always called it "A-LAR" for a long time, and somebody looked at me at the Agency and said, "It's 'AL-AR.' " So I am not quite sure what it is.

Senator **Chafee**. All right. I was calling it "A-LAR," too. Well, we will call it "AL-AR" if that is what they say. That shows the importance and sensitivity of a pesticide issue, an-issue in the area where you will be.

I hope you will be able to devote immediate attention to the intolerable situation which currently exists where, on the one hand, we have a significant number of pesticides and herbicides in the market that have never been adequately tested; on the other hand, we find that it can take a dozen years to remove a pesticide from the market even if we believe it poses unacceptable health risks. And so this is not a good situation.

You have had prior experience at EPA, which means that you can get right into this job immediately, hit the ground running, as they say. Your prior service as Assistant Administrator for Policy, Planning, and Evaluation will prove valuable in your work.

Mr. Davies, you will have the more general task of assuring that EPA does not stray from its fundamental missions as it formulates policy and regulations. I would hope that you would keep in mind the national consensus for strong environmental protection. That is the name of the Agency.

Some people call your office an in-house OMB. That is not the happiest name for it, I don't think.

Mr. **Davies**. I think it is not an appropriate one, either.

Senator **Chafee**. Well, the mere mention of OMB around here, they are usually looked upon as the adversaries.

Coordination of policy is necessary, and consideration of cost may be appropriate in certain areas, but it is important for your office to remember that the Agency's overriding mission is environmental protection; that is what the name of the Agency is. It is not the Economics Protection Agency.

Cost-benefit analyses and pre-market mechanisms have their place at EPA, and you are good at that; you have had a lot of experience. But they cannot be substitutes for tough regulatory decisions and specific pollution control requirements.

So you have a big job coming up, and I am pleased that you bring to this office your substantial management experience with the Conservation Foundation.

Mr. Atkeson, as the Agency's first Assistant Administrator for International Activities, you will be given the opportunity as well as the responsibility to make an unusual impact. I think you have one of the best jobs down there, in my judgment.

The United States used to be a world leader in environmental affairs, and we want it to be the same once again, because that role clearly has slipped away from us, and we now have a chance to recapture it, and I urge you to seize the moment and lead the charge.

With more and more attention being paid to international problems such as you and I discussed—the ozone layer, CFC's, global climate change; and I think it is perfectly proper to call acid rain an international environmental problem—there is no excuse for the United States to be anywhere but out in front. You have had a lot of experience, and good experience, in government and international service, and I think the President has made a wise choice in selecting you.

Senator CHAFEE. Thank you very much, Mr. Chairman.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG [assuming Chair]. Thank you very much, Senator Chafee.

I, too, want to welcome our three candidates. I think I have said perhaps to each one of you and to the public at large that I have been very impressed with the quality of the nominees for senior positions at EPA, and I am pleased to see you here today and to have the opportunity to ask questions to confirm this bias toward your confirmation.

I think the administration has delayed far too long naming the team it wants to manage EPA. If we are going to move aggressively to address the crucial environmental issues we face, we need an EPA which has its full complement of policy-level officials, and I hope the administration is going to now move quickly to nominate candidates to be Assistant Administrators for Water, Solid Waste, and Emergency Response, the other remaining open positions.

The candidates that we will hear from today, if confirmed, face important environmental problems. As Ms. Fisher knows, I think, and perhaps each one of you knows, I have a deep interest in the right-to-know law, and I would like to see it implemented fully.

We need to administer the new pollution prevention effort. We need to coordinate the administration's international environmental initiatives, Mr. Atkeson—we talked about that—and protecting the public health and the environment from pesticides.

Ms. Fisher, you have inherited a wonderful portfolio. There is a chance that you may occasionally even get your name in the paper in connection with some of the activities that you have.

Well, I hope that the committee will act quickly on your nominations so that you can address the critical issues that we were discussing. I look forward to working with all of you, and I wish you luck and a speedy confirmation.

I call on the Senator from Virginia, Mr. Warner.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman.

I have had the privilege of working with Ms. Fisher. I have now met Mr. Atkeson, and I am pleased to have met you, Mr. Davies.

You have become the quarterbacks of the Reilly team, and I predict the Reilly team will go down in history. You bring to this Agency a level of competence, the finest to be extracted from the walks of life in our country, at a critical time, and the team captain comes with extraordinary credentials to lead you. We wish you luck.

I have been privileged to serve on this committee several years now. I consider it a pleasure because I find a strong bipartisanship, a strong mission to support the President and the work that you are doing.

The one question that I would like to ask of Ms. Fisher is about FIFRA. Where are we in the administration's reexamination of the current law and recommendation to the Congress of a package of changes?

Ms. **Fisher**. Senator, I have been working with the Department of Agriculture and the Food and Drug Administration to develop a package of amendments that will address shortcomings in both FIFRA and the Federal Food, Drug and Cosmetic Act.

We have come to an agreement on some issues. We are still at disagreement on other issues. The package will be presented to a working-group level of the Domestic Policy Council probably in the next week or so. After that meeting, it will be taken to the Domestic Policy Council, where it will be considered by the Secretary level of the different agencies.

Between now and perhaps 10 days to 2 weeks, we should have a final administration position on those amendments.

Senator **Lautenberg**. If the Senator from Virginia would permit me, we are going to hold the remaining questions until the nominees have made their opening statements.

Senator **Warner**. I thank the chairman.

Senator **Lautenberg**. So, if you would, please, we would like to hear from Mr. Atkeson first, Ms. Fisher next, and Mr. Davies last.

STATEMENT OF TIMOTHY B. ATKESON, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR INTERNATIONAL ACTIVITIES

Mr. **Atkeson**. Senator, the course of wisdom after your gracious greetings from all three of you would be to keep my remarks as brief as possible. I have supplied a statement which is submitted for the record.

It is clear that this committee has a very important international jurisdiction. As Senator Chafee has pointed out, the action that you take on the acid rain issue in the clean air legislation will have a very important impact on our relations with Canada.

You will be considering the question of the chlorofluorocarbon phase-out, protection of the ozone shield. As you know, we will be moving toward an accelerated phase-out in the modification of the Montreal protocol this coming year, and we will keep you fully posted on progress in that respect.

You have already held hearings this April on the responses that should be considered to the global warming issue, so that your committee is certainly in a lead position in the Senate on the recognition of how important international agreements are going to be to the protection of the U.S. environment.

If I could quote a sentence from The Economist magazine on this subject, which I thought was quite telling, they had a lead article this week on the "First Green Summit". They said, "What defense has been to the world's leaders for the last 40 years, the environment will be for the next 40, an intractable exercise in national self-restraint where gains depend less on what individual countries do than on whether many countries trust each other and can work together."

We feel very strongly, and I am sure you agree, that an essential part of protecting the U.S. environment in the future is going to require mobilizing international agreements to protect the shared environment with many other countries.

Senator Burdick, in his opening comments, said that he hoped that we would realize that the fashionable concerns about global warming and protecting the ozone shield would have to be taken into consideration together with the problem of working with the developing countries on everyday environmental problems, and we are very acutely aware of that.

If we have agreements among the G-7 countries at the summit on these big issues but we do not bring the major developing countries like India, China, and Brazil and some of the others along with us, we will have agreements that are not effective. We are tackling the issue of how we can bring about this more general agreement.

When we were in Helsinki in May working on the ozone shield issue, we went to the Chinese and we went to the United Nations Development Program people and said, "Will you please try to figure out how the Chinese can make this transition out of chlorofluorocarbons so that they can come into the Montreal protocol." I am glad to report that with the help of Finland, they have been able to offer assistance to the Chinese, and the Chinese have indicated that they will probably accede to the Montreal protocol on the protection of the ozone shield. In terms of a step forward toward protection of the global environment this is a very important indication of progress.

I have listed a great numbers of laws and treaties and executive agreements that we will have to take account of in administering EPA's international responsibilities. Your committee is responsible for quite a number of these.

I think one of the most important considerations from your point of view is that Mr. Reilly and I have previously been colleagues at the Council on Environmental Quality in the 1970's, so we are very closely familiar with each other's work. Russell Train, who was our chairman at the Council on Environmental Quality, was our mentor in negotiating the early international agreements we achieved in the 1970's on Endangered Species, the World Heritage Trust, and the London Dumping Convention, so that we have had considerable successful experience together in this area already.

Senator Burdick has noted that I have been general counsel to the Asian Development Bank and counsel to the Inter-American Development Bank, so that I have had considerable experience working with developing countries.

My only concluding observation is the one that Senator Chafee mentioned, that it would be hard to conceive of a job with greater interest and greater opportunity than the one that I have been nominated for, and I regard it as a great privilege to appear before your committee and to be considered for this post.

STATEMENT OF LINDA FISHER, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR PESTICIDES AND TOXIC SUBSTANCES

Ms. **Fisher**. Thank you, Mr. Chairman.

It is a pleasure to appear before this committee again seeking your confirmation to be an Assistant Administrator at EPA. As you know, I have been at the Agency for 6 years and have been committed to its mission, and I feel myself very lucky to have had an opportunity to work there for as long as I have.

Bill Reilly emphasized to me both his and the President's commitment to environmental protection when he asked me to take this position, and I assure you I intend to carry out both the priorities he has set as well as the President's, if I am confirmed.

During my 6 years at EPA, I had the opportunity to appreciate the importance of working with the constituencies outside the Agency. Those include Congress and the States, industry, the agriculture community, which I will get to know well in my new position, as well as the members of this committee and other committees. I want you to know that, as in the past, I intend to work closely with you and other Members of the Congress in carrying out FIFRA, TSCA, and the other responsibilities that I will have.

There will be three broad principles that I think will guide my tenure. First is that I share Bill Reilly's belief that the decisions that I make must be based on good science. I am not a scientist; I do not have that type of professional training. Therefore, I will be relying heavily on the professional staff that I have at EPA for scientific advice.

Secondly, I think one of the best environmental policies we can follow is that of prevention. I had a great opportunity to help establish the Pollution Prevention Office, and as I have learned more about TSCA and FIFRA, I have found that those are two very important tools to carrying out a pollution prevention ethic, and I intend to use my responsibilities to accomplish that.

Finally, I think enforcement is probably the cornerstone of a successful environmental protection effort. Again, I will be looking to strengthen TSCA and FIFRA to bring about better enforcement.

There are a few priority areas that I will be focusing most of my attention on that I want to briefly discuss with the committee today. First is the one that we have all talked about already: food safety. Although I believe that the food supply in the United States is the safest in the world, I do not believe that that is an excuse for us to let down our efforts in making it all the more safe.

The ALAR controversy earlier this year shows that old and inadequately tested pesticides may pose risks. I consider it my priority to help build the public's confidence in our food supply by addressing quickly these old, problematic pesticides. To do so, as I spoke with Senator Warner a minute ago, we need to streamline the FIFRA decisionmaking process, and I have been working within the administration to accomplish that.

Additionally, EPA is going to have to do a better effort to systematically review all the old pesticides that are currently on the market to ensure that they meet the current scientific standards. FIFRA 1988 provided us with the tools and the legislative mandate to quickly accomplish that goal. We are in the process of making a comprehensive review and reregistering these old pesticides. It is going to be an effort that will take about 9 years, but I think it will be one that will accomplish tremendous ends.

In terms of toxic substances, I am very aware of the need to exercise strong controls on toxic substances, both before, during, and after their manufacture. TSCA provides us tremendous opportunity to halt the introduction of risky substances before they get into the market as well as addressing substances that are currently there.

Recently the Agency announced its asbestos ban and phasedown. It was a high-water mark for the role of TSCA in preventing pollution in this country. But I have to tell you that it took the Agency 10 years to accomplish that rulemaking under section 6 of TSCA, and that is a concern to me. I intend to look both administratively and legislatively to see what we can do to strengthen TSCA so it will be a more effective tool.

Additionally, as you discussed, the community right-to-know legislation provides us a great opportunity to bring about reduced emissions into the environment. My counterpart, Tim, was just referring to CFC's. We will be using the Toxic Substance and Control Act as the vehicle for reviewing the substitute chemicals for the CFC's. I intend to carry that out in as expeditious a manner as possible because of the national and international pressures to take care of CFC's.

Internationally, we find a lot of pesticide and chemical issues as well. I have had an opportunity to work in the international arena on climate change, and I tend to use my contacts and experiences in that area to deal with the international issues posed by chemicals.

I believe that we need to do better to ensure that our regulations, our testing techniques, and our data are shared among countries, and I will be working with many in the international community to do that.

Additionally, I would like to expand EPA's involvement in dealing with the less-developed countries so they can better develop their own capabilities to handle the pesticides and the toxic substances. I also want to provide them with the adequate information that they will need to deal with pesticides that are being imported into their countries.

In conclusion, let me state that my priorities are built on those that have been established by the President, by the Administrator, and by this committee and the Congress. They will include a continuation of many of the vigorous policies that were undertaken by Jack Moore and Lee Thomas. I look forward to continuing a working relationship with this committee as I try to carry out the very extraordinary mandate presented to me in this position.

Thank you.

Senator LAUTENBERG. Thank you very much, Ms. Fisher.

I would now call on Mr. Davies. Before that, I would like to enter into the record a letter from Senator Paul Sarbanes, who, Mr. Davies, has many kind things to say about you, and perhaps what we ought to do is get you a copy of this as well so that you have it on your wall, and then as people criticize, you can kind of contemplate what a distinguished U.S. Senator said. That should buoy your spirits and keep you going.

[The letter referred to follows:]

PAUL S. SARBANES
MARYLAND

United States Senate
WASHINGTON, DC 20510

July 27, 1989

Senator Quentin Burdick
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20036

Dear Mr. Chairman:

I regret that a prior commitment prevents my being present this morning personally to introduce J. Clarence (Terry) Davies, a long-time resident of Maryland, who has been nominated to serve as Assistant Administrator for Policy, Planning and Evaluation of the Environmental Protection Agency.

Terry Davies brings very substantial qualifications for the position to the position to which he has been nominated. A graduate of Dartmouth College who received his doctorate from Columbia University, a teacher and a prolific writer, Mr. Davies has devoted most of his professional career to environmental policy matters.

After first teaching in the Government Department of Bowdoin College, Mr. Davies came to Washington in 1965 to be Chief Examiner for Environmental and Consumer Protection in the Bureau of the Budget. In 1967-1970 he was an Assistant Professor in Princeton University's Politics Department, where among other courses he taught what must have been one of the very first on the environment, "Public Policy and Pollution Control." In 1970-1973 he served as Senior Staff Member at the Council on Environmental Quality, Executive Office of the President.

Mr. Davies left government service in 1973 to join Resources for the Future, Inc., as a Fellow and Assistant Director of the organization's Institutions and Public Decisions Division. In 1976 became Executive Vice-President of the Conservation Foundation, where he served continuously until his nomination to be EPA Assistant Administrator.

Mr. Davies will bring to the EPA long and distinguished experience with environmental policy matters, and one can surmise that his nomination reflects the high regard which his former colleague at the Conservation Foundation, EPA Administrator Reilly, has for his qualifications and judgement. As environmental problems grow in urgency and complexity, the need for such demonstrated competence has never been greater. I am therefore particularly pleased to present Mr. Davies to the Committee.

With best regards,

Sincerely,

Paul Sarbanes

Paul S. Sarbanes
United States Senator

PSS/jds

Senator **Lautenberg**. We invite you to give your testimony.

Mr. **Davies**. At least point to what my reputation used to be.

Senator **Lautenberg**. This is the other member of the CEQ. It looks like we have a triumvirate here with Bill Reilly and Mr. Atkeson and you, Dr. Davies. So we invite you to give your testimony. We do not neglect the experience of Ms. Fisher, which is unique. She has been in the boiling pot for some time now, so she is quite conditioned.

Please proceed.

STATEMENT OF J. CLARENCE DAVIES, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING, AND EVALUATION

Mr. **Davies**. Thank you, Senator.

Mr. Chairman and members of the committee, my name is J. Clarence Davies, and that requires a quick word of explanation because the J does not stand for anything. Therefore, I am generally known as Terry.

I am deeply honored to appear before you today for consideration as the nominee to serve as Assistant Administrator for Policy, Planning, and Evaluation at EPA.

At the outset, let me make clear my commitment to work closely with this committee and with the Congress as a whole in pursuing the vitally important cause of environmental protection. I will skip over the part in my statement dealing with my qualifications. You have a résumé, you have the prepared statement, and so, in the interest of time, let me pass over that.

Senator **Lautenberg**. Thank you.

Mr. **Davies**. I would just point out that I have for the past 13 years served as Bill Reilly's executive vice president at the Conservation Foundation. Bill and I know each other well. We share the same views about the environment, and I hope that I will be able to continue to work with him to implement these views.

I would like to briefly outline what the Office of Policy, Planning, and Evaluation does and what my priorities will be if I am confirmed.

The office engages in three types of activities. First, it reviews all regulations and most other measures proposed by EPA to ensure that they embody the most effective way to meet statutory requirements.

Second, the office is in charge of Agency planning, and in this connection, it is responsible for keeping track of whether the Agency is meeting its goals and for providing a variety of services such as program evaluation and statistical assistance to the other parts of EPA.

Third, OPPE is the lead office for two cutting-edge policy areas, pollution prevention and global climate change. Each of these functions is vitally important and will be continued. They need to be strengthened, and there are some new activities that, in my opinion, need to be undertaken.

Pollution prevention is an example of an issue—more precisely a philosophy—that Bill Reilly and I agree needs to be given much greater attention. Not only is it the most effective and efficient way of dealing with many of the tasks that now face EPA; it is, in the long run, the only way of dealing effectively with such key problems as asbestos, heavy metals, and other toxic pollutants.

Once these kinds of pollutants enter the environment, it is either impossible or extraordinarily expensive to control them. Pollution prevention must be a basic approach in future efforts to improve environmental quality, and I pledge to this committee that, if I am confirmed, I will take steps to strengthen the Agency's ability to foster the pollution prevention approach.

Climate change is the other major issue for which the policy office has the lead. To stress the importance of the issue is unnecessary; it has been widely recognized as potentially the most significant and overwhelming environmental challenge that the planet faces. There is a pressing need for careful analysis and for the development of policy proposals to deal with the challenge.

OPPE, in cooperation with EPA's Air, Research, and International Programs, has been meeting this need, as demonstrated by the two reports that we have prepared at this committee's request. Our work on climate change will accelerate as negotiations on an international climate change convention begin.

The planning function within EPA needs improvement, and the Office of Policy, Planning, and Evaluation has the central responsibility for meeting this need. The Administrator has required, for the first time, that each EPA program office prepare a 4-year strategic plan. OPPE has begun to assist the programs in the preparation of these plans.

One of my personal goals is for these plans to encourage the greater use of environmental indicators, based on actual measures of the condition of the natural environment, to help refine priorities at EPA.

Finally, there is a need for greater integration of environmental policy. This has two dimensions, internal and external. Internal integration means a closer relationship among the different programs within EPA. The newer environmental problems do not fit neatly into the traditional air, water, and land categories. For example, most toxic substances occur in all parts of the environment and can easily be transferred from one part to another. Thus a more closely coordinated approach is necessary.

External integration focuses on the relationship between environmental policy and other policy areas, such as agriculture, energy, and transportation. The major tasks that must be accomplished in the future to protect and improve the environment are as likely to require changes in these other policy areas as they are to require changes in EPA policy. For example, one cannot separate measures to deal with global climate change without dealing with questions about national energy policy.

One consequence is that EPA must improve its ability to understand and appreciate the opportunities and constraints in these other policy areas so that it can interact with the other relevant agencies on a more profound basis. The Office of Policy, Planning, and Evaluation has some staff resources in both agriculture and energy policy, and I would like to see these resources strengthened.

I hope that I have given you some basis for judging my suitability for the position, and I must say that I can think of no job, including Tim Atkeson's, that is more challenging and exciting. I hope that you will give me the opportunity to work with you in meeting these challenges and to improve the quality of the environment; and it is to improve the quality of the environment, not to lower costs, that I am seeking to get the job.

I would be glad to answer any questions that you may have.

Thank you.

Senator **Lautenberg**. Thank you very much.

We appreciate the enthusiasm that your job specifications have created for each one of you. I hope you feel that way 6 months from now. Obviously, you all three share a serious commitment to a cleaner environment, and I am pleased to see that.

I was interested in Mr. Atkeson's comment about the importance that the environmental issue has taken on internationally and compared in some form to how this has preempted the military as a principal concern. I just wish that we could exchange some of the budget dollars that go into military and put them into the environment. I think we would all be stronger as a world and healthier as a people if we could move some of those dollars over.

That is a principal concern that we all share here, and that is that we have very ambitious programs, and when we are awakened by a reminder of what happened again in New York State, perhaps the equivalent of a Love Canal or worse, and the discovery of the contamination there, we know that we are talking about large dollar expenditures. We are all going to have to work, and I am pledged to work, on getting the funds necessary to do this job. We will need your help in those areas, too, irrespective of the committee assignments that you have.

I have some questions for the chairman. One is, are you willing to appear in front of any committee of the House or Senate of the U.S. Congress if you are asked to do so? I would ask each one of you either to nod visibly or to say yes.

Mr. **Atkeson**. Ladies first.

Ms. **Fisher**. Yes, Senator. Sometimes I feel as though I have spent most of my life at EPA in front of the Congress, and I will continue to be available.

Senator **Lautenberg**. A professional witness.

Ms. **Fisher**. That is right.

Senator **Lautenberg**. How about you gentlemen?

Mr. **Atkeson**. The answer is certainly. We have answered that question in writing in answer to the committee's questionnaire, and we reaffirm that answer.

Senator **Lautenberg**. All right. Dr. Davies?

Mr. **Davies**. Yes, sir.

Senator **Lautenberg**. The second question for the record, do you own any properties or hold any positions which would put you in a conflict-of-interest position if you are confirmed in this job at EPA?

Ms. **Fisher**. No; I do not.

Senator **Lautenberg**. I hardly expect a yes answer.

Mr. **Atkeson**. No; I do not.

Mr. **Davies**. No, I do not.

Senator **Lautenberg**. Thank you.

Mr. Davies, the Assistant Administrator's position for Policy, Planning, and Evaluation is responsible for EPA's pollution prevention program, as you noted, and I have a pollution prevention bill, as have several others, and the administration is doing something, also. Where does that rank in terms of your priorities?

Mr. DAVIES. It ranks very high, as I indicated in my opening statement. It is perhaps the highest of my priorities in terms of the responsibilities of my office. In terms of the legislation, I would probably have to say that Bill Reilly would rank the Clean Air Act a little bit above the pollution prevention legislation in terms of his goals, but pollution prevention is second.

Senator LAUTENBERG. When does the administration plan to submit its pollution prevention bill to the Congress?

Mr. DAVIES. We are meeting this afternoon within EPA in what I hope will be the last meeting to iron out the details of the bill. Assuming that meeting succeeds in its purpose, we would expect to transmit it to OMB for interagency clearance tomorrow or Monday. It is always a little unpredictable how long that interagency process takes, but I would hope not more than a couple of weeks, so that certainly by the time the Senate reconvenes in September, the bill will be up here for your consideration.

Senator LAUTENBERG. I look forward to seeing that. Do you know whether it is likely to be free-standing or an amendment to existing legislation?

Mr. DAVIES. No, it will be a free-standing bill. The sort of multimedia nature and the rather broad and sweeping nature of the pollution prevention effort means that to attach it to any bill that deals only with a particular environmental policy would probably not be the right way to go about doing this.

Senator LAUTENBERG. Do you see it with a regulatory or non-regulatory approach to pollution prevention?

Mr. DAVIES. The approach in the bill is primarily non-regulatory because it is our belief that that is, at the moment, where the greatest needs and opportunities lie in the pollution prevention area.

We need to know more about what methods and techniques are most effective for preventing pollution, and we also, I think, need to do a job of disseminating that information and of proselytizing, if you want, for the cause of pollution prevention. We need to get people within EPA, within the rest of the Federal Government, at the State level, at the regional level, and so on, to understand why pollution prevention is important and what they can do about it.

I think one of the corollaries of that is that while the bill itself may take a primarily non-regulatory approach, there are clearly regulatory implications to the pollution prevention approach. We are working with the regulatory programs within EPA to get them to understand the advantages of a more preventive approach to their regulatory responsibilities. And I, for example, would categorize the recent ban and phase-down of asbestos uses as essentially a pollution prevention measure. The only way you are really going to prevent asbestos pollution is by banning it, and that is what we have done.

Senator LAUTENBERG. Yes, the prohibition of future use, of asbestos. But the removal——

Mr. DAVIES. That is a separate question.

Senator LAUTENBERG. Right.

I wanted to ask Ms. Fisher something that you and I discussed—I just wanted to be sure it is clearly on the record here—about the right-to-know law and its requirements. It took almost 9 months to get the data out that was developed in 1987, and by the time that information was released, we were substantially through 1989. Do you see a pick-up in the pace on the release and the dissemination of the 1988 data?

Ms. **Fisher**. I think so, Senator. I have actually not heard back from the staff after you and I talked yesterday, but we are getting our systems in order to deal with the data, both just in terms of the data processing systems and our own ability to better assess what has come into the agency to deal with the vast amount of both papers and actual information on those papers. So I believe that we should be able to do a lot better in the coming years as our process gets a little bit more routinized.

Senator **Lautenberg**. When would you think we might have the 1988 data released?

Ms. **Fisher**. I will have to get back to you. I did not get a date from the staff. But I will let you know.

Senator **Lautenberg**. You are responsible for right-to-know enforcement actions, and I am pleased to see that EPA has recently taken some action there.

I would like to ask you once again, for the record, what is the staffing plan for the enforcement section in numbers of full-time employees?

Ms. **Fisher**. I can get you the exact numbers. We are in the process of beefing up the regional efforts to deal with community right-to-know enforcement, both in terms of guidance to them so we can target types of facilities that we are most interested in, as well as beefing up their capabilities.

Senator **Lautenberg**. You will need a staff, however, at headquarters to coordinate those efforts and give some direction.

Ms. **Fisher**. That is true, but a lot of the actual on-the-site enforcement activities will be done in the regions. In fact I am meeting with the regional directors in about 3 weeks to review some of the priorities that they need to focus on, and one of those will be community right-to-know.

Senator **Lautenberg**. In our earlier conversation, you laid out that kind of program. I just wonder whether or not we are going to be able to get the information more rapidly or more efficiently by having the regions involved. I guess, in terms of enforcement, that is a good place to go, but it is going to need a fair amount of direction from your office.

I am told that you are looking for about 11 full-time people at your office to monitor the enforcement actions on right-to-know. Do you think that that is a sufficiently sized staff to do that coordination?

Ms. **Fisher**. At this point I do. I will tell you, as I am learning all these programs, I have not had a chance yet to go back to the staff and say, What is not being done because of resources; where would you put them if we had more? So I can get back and talk to you about that once I have had a chance to pose that question.

Senator **Lautenberg**. Yes, because it was believed that we had about a 30 percent non-compliance rate. That is a fairly good-size universe. But you will need some time there to develop sufficient knowledge to know exactly what the staffing requirements are going to be. I hope that in the future you are going to be pushing—each of you—OMB for the manpower that you need to get this job done, and particularly in the enforcement area. We have turned up a valuable asset in this right-to-know process and the data that we are accumulating.

Ms. **Fisher**. We are also trying to determine, Senator, where the 30-percent lie, whether they were people who knew they should report and failed to or people who had no idea of the requirements. So we are trying to focus at this point both where the problem is so that we can do better from both an enforcement as well as a public information point of view to address that. So we have an enforcement strategy that we are developing in headquarters that will be worked with and through the regions.

Senator **Lautenberg**. Senator Chafee.

Senator **Chafee**. Thank you, Mr. Chairman.

First of all, I noted from these various résumés that we have quite a group of candidates here from an intellectual achievement point of view. We have two Phi Beta Kappas and a Rhodes Scholar, so that is impressive, and each of these candidates is a tribute to Bill Reilly's going out and trying to get the best people he can.

Mr. Atkeson, I notice you have eight children.

Mr. **Atkeson**. Yes, sir.

Senator **Chafee**. That is a distinction. Seven sons and a daughter.

Mr. **Atkeson**. Have you heard the statement, Senator, "We have not inherited the Earth; we have borrowed it from our children"?

Senator **Chafee**. You have a big debt, then.

Is any of your family here you would like to introduce to us?

Mr. **Atkeson**. Senator, I have my youngest son sitting behind me here, Jonathan.

Senator **Chafee**. Good. Any other families present?

[No response.]

First of all, Mr. Davies, I would appreciate it if you would take a look at what reports are required from your Agency that you think are useless and that we may not pay attention to.

There is nothing more rapidly accepted and less resisted than to add to legislation language to do a study or submit a report. Frequently the proponent of the legislation has chosen this route rather than face a far tougher demand; so he asks for a report or a study. We all are so happy he only asked for a report rather than pressing for some piece of legislation that we pass it with enthusiasm.

There may be some reports that you think are useless; that take time and energy down there, let us know, and we will see if we cannot cancel that demand.

Secondly, I am not quite sure, judging from your statement, who has responsibility for global warming problems. You indicated that that was one of your duties. As I understand your statement, you say on page 4, "Climate change is the other major issue for which the policy office has the lead."

I thought Mr. Atkeson—I am not trying to stir a controversy here—I thought that was his job.

Mr. **Davies**. It is a job which is shared not only by the two of us, if we are confirmed, but also by the Office of Research and Development within the Agency and by the Air Office within the Agency. There are a number of different parts of this, and actually, the Office of Toxic Substances has some role as well.

The climate change issue is such a pervasive and broad-reaching issue that, inevitably, there are a number of different parts of EPA that are involved. The lead role within the Agency, however, has been given to the Office of Policy, Planning, and Evaluation.

The reason for that is that the primary need as we see it at the moment is to develop the policies necessary to deal with the issue. We are essentially in policy development stage of the issue. I anticipate with some confidence that that will switch over into a more regulatory, action-oriented mode fairly shortly, but that is not where it is now, and the development of policies, the analysis and exploration of various alternative ways of dealing with the issue, is something that the policy office has the responsibility for within EPA.

Senator **Chafee**. I have always felt that of the two principal international challenges, if you want to delineate them—one being global warming, the other being the destruction of the ozone layer—that the destruction of the ozone layer is easier to get a handle on, and indeed, in this committee we have already started it, if you followed the legislation that we passed in connection with the reconciliation measure.

But in order to do something about global warming—the United States is one of the worst offenders. My understanding is that we produce 5 tons of carbon dioxide for every man, woman, and child in the country, whereas the world average is less than 1 ton. I am talking per capita, per year. The next worst offender is—Canada is about the same as us, but of course they have fewer people, and the Soviet Union is 3½ tons per person; we are 5.

So there is the problem, and who is going to come up with some suggestions of what to do about it? Is it going to be the Department of Energy? I understand Secretary Watkins is talking about developing a national energy policy. But this is going to involve burning less coal, for example. Who is going to tackle that problem? You or Mr. Atkeson? And if so, how are you going to go about it?

Mr. **Davies**. Let me just say that Mr. Atkeson and I have worked with each other for many years, and I think that in some ways the formal charges and jurisdictions within the Agency are less important than whether Tim and I know each other well enough to have lunch together or pick up the phone or whatever, and I can assure that we will work closely and cooperatively together on these kinds of issues.

I have already had some discussions with Linda Stuntz and other relevant people within the Department of Energy about how we will work with them on the global climate issue and on the national energy plan, and so my hope is that the two agencies will cooperate closely in dealing with this.

Senator **Chafee**. Do you think the administration can come up with some policy in connection with CO_2 reductions, and if so, how long? I understand that Secretary Watkins said that he is going to develop a national energy policy; he is going to travel around the country trying to build a consensus and should have a plan for the President in about 2 years.

Building a consensus is fine, but somebody has got to take some leadership. I am not criticizing Admiral Watkins. I am more interested in your particular agency, what you can do.

Mr. DAVIES. I think there clearly is a sense of urgency about acting on the problem within the administration. On the other hand, there also is a sense both of the need to bring other nations, particularly the less-developed countries, along with us, and not to take actions that might be counterproductive with respect to bringing in the LDC's, and also a realization of the magnitude of change that might be brought about, that will have to be brought about, by the kinds of measures that will be necessary to deal with the problem.

CO_2 emissions are pervasive. Any form of combustion produces CO_2. And so one is talking about things that will have major impacts on the economy and on the way we do things in this county.

I might defer to Linda because she has been working in this area.

Senator CHAFEE. Well, let's hear from Mr. Atkeson a couple of minutes on this subject.

Mr. ATKESON. Terry was pointing out that Linda has been his predecessor and has played a very leading role in developing the substantive policy.

The issues involved in global warming involve a tremendous range of economic and scientific issues, and the resources of OPPE have been heavily engaged in this.

On the international activities side, we focus more on the question of how you translate these policy judgments which are developed by Terry and formerly Linda's shop into international agreements. For instance, we are looking very closely at the issue of when will it be timely to go forward with a framework convention on global warming analogous to the Vienna Convention which set the framework for getting hold of the ozone shield problem. Our prediction is that that should start next year.

Senator CHAFEE. The President is talking about a workshop this fall on global warming. This fall is very close. Is that under way? Is he going through with that? That is what his statements were following, I believe it was the meetings in Geneva.

Mr. ATKESON. That workshop will take place, I think, the first week in October in Geneva. Terry's operation is working very closely with ours and with the State Department and with the Department of Energy, I believe, to staff that examination of responses so that we should get a very good reading following that as to what we are ready for as the next stage.

As you probably know, the President has invited the leaders of this international Intergovernmental Panel on Climate Change to meet with him in Washington in the first week of February next year.

Senator CHAFEE. I am a little bit confused. I thought the President indicated that this workshop was going to be in Washington, but apparently I am wrong. I had the impression he was talking of hosting this workshop.

Mr. **Atkeson**. I think, on review, they decided that they would want the President to host all three committees of the IPCC rather than just one, and the way of doing that would be to have committee number three, which works on responses, have its meeting in Geneva in October, and then have the President host the plenary meeting of IPCC, including committee No. 1, which is science, committee No. 2, which is effects, and committee No. 3, which is response actions. In other words, the whole sum of IPCC understanding on global warming will be available in the Washington meeting next February.

Senator **Chafee**. Thank you.

Mr. Chairman, I see my time is up. Thank you.

Senator **Lautenberg**. Thank you very much.

Just very briefly, a couple of things.

Mr. Atkeson, how do you plan to deal with State Department in particular, and other agencies as well, where coordination is required but the biggest focus, I would guess, or the biggest concern would be with the State Department and, of course, international policy or foreign policy generally.

Mr. **Atkeson**. Senator, our relations with the State Department are excellent. As you saw at the summit, Secretary Baker and Mr. Reilly were close collaborators on providing the President with his material for the summit meeting on environmental issues.

We coordinate all our contacts with foreign governments through the State Department, and they have a great deal to say about the timing and pace of negotiations on international environmental issues. They look to us to back them up with substance on these things.

From time to time, EPA will be the leader of a negotiation. For example, on the Montreal Protocol, when it was negotiated in 1987, when Lee Thomas, the head of EPA, attended the negotiations, I believe EPA led the negotiations. But it is a flexible matter as to which department provides the leader for the group. In most cases State will do that, but in a number of cases, EPA will perform that function.

Senator **Lautenberg**. It is fairly easy to see in something like the Montreal meeting. When you get, however, to the multilateral banks, the international agencies that have a specific foreign policy mission, then obviously EPA is not likely to be in the leadership role. How do we see that the EPA view—we have had several legislative proposals to force the multilateral banks to pay attention to the fact that the countries that are borrowing have a responsibility to the environmental concerns that we have.

Mr. **Atkeson**. We work very actively with Treasury on that. As you probably know, the U.S. governor of the multilateral banks—the World Bank, the Asian Development Bank—is the Secretary of the Treasury, so that we go over to Treasury and talk to them about U.S. policy in this area, and we actively have contact with the multilateral banks also.

Mr. Reilly, for example, working through the Office of the U.S. Representative to the Inter-American Development Bank, had a luncheon with President Iglesias of that bank to discuss just this issue, and in September, I will be returning to my former habitat, the Asian Development Bank, working with the U.S. Director of the Asian Development Bank. I will be reviewing all the issues that your committee has raised with that bank.

Senator **LAUTENBERG**. Thank you.

I am going to see that the record is kept open. That is the wish of the chairman. We have several questions that will be submitted to each of you in writing. We would ask for your prompt and, of course, thorough response.

I would just like to note that we were pleased to see Bill Reilly standing with the Secretary of State and the President at the recent summit. But if you read the reports, there was some concern—it may even be expressed as dissatisfaction—with the fact that there were no concrete proposals. Everyone salutes a clean environment. It is, to use the expression, when you have to belly up to the bar, you have to pay for it, that is when we see how serious the intentions are.

I hope that we will see that reflected in budgetary commitments, staffing, and the encouragement by the President. I think that he is certainly off to a good start by his early declarations that he was going to be the environmental President, and we were encouraged by that. I have been a little concerned since that time by what I must say was a watering down of what I thought was going to be a stronger attempt at good clean air legislation, and also by lack of firm commitment on the international accords to get something more specific going.

So we will be watching with interest, and we hope, Mr. Atkeson, that you in the international arena and your colleagues here in each of their responsibility areas will encourage not just a good environmental law but support by Bill Reilly and the administration respectively where you have contact to give us the tools to do the job with.

We are very pleased to have, again, all three of you in front of us, such quality candidates, as Senator Chafee noted, quite an academic array of credentials, not the least of which, of course, is Mr. Davies' Columbia degree. I have a particular affiliation there. So we thank you.

I will turn now to Mr. Lieberman. Senator, do you have either a statement or questions? We have kind of a 10-minute cycle, if you would like.

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator **LIEBERMAN**. Thank you, Mr. Chairman.

I appreciate your courtesy and will take much less than the 10 minutes; I would like to take more than the 10 minutes but I have to go back to the Hastings impeachment trial.

I wanted to say good morning to these three nominees. I have had the pleasure of meeting Mr. Atkeson and Mr. Davies. I have not yet met Ms. Fisher, and I look forward to it.

I did want to say about Ms. Fisher's position that, much to my surprise over this first 6 months of my life as a member of the U.S. Senate, I have become much more interested than I would have guessed in the position of Assistant Administrator for Pesticides and Toxic Substances, primarily because of the involvement that several of us on this committee, and ultimately the full Senate, had on the question of ALAR.

I would say to you that I came away from that experience troubled about the history, I guess I would say, of EPA involvement in setting tolerance levels for pesticides in the food supply; the fact that, in the case of ALAR, it took 16 years from the first evidence that ALAR might be carcinogenic to the ultimate steps to ban it. Unfortunately, it took a lot of media pressure to have that happen.

I am pleased with the notion that EPA, as Bill Reilly apparently announced last week, is coming forward with some new ideas for changes in FIFRA, and I look forward to being part of that process with you.

In that regard, I would like to submit for the record not only a statement, Mr. Chairman, but to submit some written questions for Ms. Fisher which I would appreciate answers to as part of the record for this hearing.

Senator LIEBERMAN. I thank you for giving me this opportunity to say these few words.

Thank you.

[Senator Lieberman's statement follows:]

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

In my short time in Washington I have come to appreciate the importance of the position of Assistant Administrator for Pesticides and Toxic Substances. Pesticides are widely used throughout this country, on our lawns, in our public parks, and most importantly on the food we eat. Of the many chemicals in use in our society today, pesticides are, perhaps, the chemicals that Americans are most likely to be exposed to on a daily basis throughout their lives. As a parent, and the representative of American consumers, I am very disturbed by EPA's past failure to adequately regulate pesticides.

The Alar situation we were confronted with this spring was just a symptom of the problems at EPA, but it is a good example of the potential harm to both farmers and consumers that can arise from a failure to regulate under the law. I am concerned that it takes 16 years from the first evidence that a chemical is carcinogenic until the EPA initiates cancellation proceedings. I am concerned that EPA does not take sufficient account of the risk to subpopulations, like children, who may be more susceptible to a potential carcinogen and/or consume much larger quantities of treated fruits and vegetables than the "average" consumer. It should not take a story in the media to force EPA to act on a chemical it has long had the opportunity to review. When these issues are raised by the media it creates grave concern on the part of consumers and can severely harm farmers who have only been doing what EPA told them was legal.

I believe that there is an opportunity now to dramatically improve EPA's regulation of pesticides. I have had a brief opportunity to review EPA's proposed changes in FIFRA and the Federal Food, Drug, and Cosmetic Act, and I have some questions which I will submit in writing to Ms. Fisher. I am pleased that EPA has developed these amendments, but I remain concerned as to what effect they will have on speeding up the reregistration process and ensuring that the most dangerous pesticides are reassessed as soon as possible.

EPA has completed reregistration of at most three, perhaps none, of the approximately 600 pesticide active ingredients which need to be reregistered. I would like to see from the Agency a timetable indicating how they will complete reregistration in the nine years given them under the 1988 FIFRA Amendments. I would also like to see a schedule of when the Agency will review the 10 pesticides with the highest risk levels which contribute 80% of the risk to which the American consumer is exposed.

I am also concerned about the public's lack of confidence in the EPA's review and regulation of pesticides. The fact that EPA released inaccurate information about the amount of Alar residues on apple products, information which was contradicted by every other independent testing report which was released, did not give the

American people a sense that EPA was regulating pesticides based on accurate knowledge of their presence on our food. When EPA released its Alar residue numbers, it did so to reassure the American people that it was safe to eat apples. EPA will only have the ability to convince consumers that products are safe if the information it releases is credible and if the public has a sense that it is regulating pesticides carefully and expeditiously.

Because of my obligation to the Hastings Impeachment Committee, I regret that I cannot stay for this hearing. I have submitted a list of questions to the Committee for the nominee and I look forward to the opportunity to review her responses and discuss them with her in the near future. Because of the importance of this position and the serious questions about EPA's past regulation of pesticides, and because of my obligations to the Impeachment Committee, I greatly appreciate the Chairman's and Ranking Member's willingness to allow Senator Durenberger and me the time we have requested to consider this nomination.

Senator **Chafee** [assuming Chair]. Ms. Fisher, it seems to me that there is a lot of power contained in the Toxic Substance Control Act that is not being used, and I have a problem with that.

It seems to me we ought to cut off production of these chemicals before they get out there, instead of trying to clean up the mess, which is extremely difficult, if not close to impossible. Why do we permit these chemicals to be produced in the first place?

I would like to see whether you believe that the act could be used for this and why isn't it being used, and if it can be used, will you use it.

Am I incorrect in believing that, under the Toxic Substances Control Act, you can cut these things off before they are in production?

Ms. **Fisher**. In two situations. First of all, we do have a premanufacture section of TSCA that deals with new chemicals in which the agency has to do some screening before they come on line. So we can use that as a tool to be sure that, as chemicals are manufactured, they are not chemicals that are going to cause problems.

Additionally, under another section of TSCA, we can look at chemicals that are currently in the environment, and if they pose an unreasonable risk, we can move to either control them or ban them, as we did in the case with asbestos.

The Agency has had a difficult time, I will tell you, as I said in my statement, in using section 6. It is a very powerful section of the statute, but it has taken us a long time to be able to act effectively with it. As I said, the asbestos ban and phase-down took the Agency over 10 years, and it was a situation in which we were dealing with a substance that was a known human carcinogen. So, in that sense, it was a substance that we should have been able to move on quickly.

I need to look at, administratively, what we can do to make that section a more effective section.

Senator **Chafee**. I understand, Mr. Davies, that you were one of the authors of that section.

So perhaps you can tell us what you intended.

Mr. **Davies**. I think it is less a matter of intent than a matter of the history by which those provisions were hammered out.

There was, both within the executive branch and then similarly at a later time within the Congress, an implicit tradeoff that really is the underlying fact, in my mind, about all of TSCA. This was a tradeoff between very broad authorities, as you have correctly indicated, accompanied by very high legal hurdles which would have to be jumped before you could invoke those authorities. That really is, as I say, the underlying fact of the bill.

Senator **Chafee**. What is the tradeoff? Would you say that one again, please?

Mr. **Davies**. Between a grant of very broad powers and authorities to the Agency but a very complex and high set of hurdles that legally must be met before those powers can be invoked—a set of hearings, a set of requirements of evidence, procedural requirements, a whole set of things of that kind that either must be done or must be satisfied by the Agency before those powers can be invoked.

Senator **Chafee**. I suspect it is very, very complicated and requires extraordinarily skilled and trained personnel. Perhaps scientific personnel trained in chemistry, so that you will know the answer to these. We probably have great difficulty attracting people like that at the salaries we are able to pay to match the chemical companies.

But it does seem a pity that these things get loose in our world, in our country, and then we are trying to play catch-up all the time, usually unsuccessfully.

For you, Mr. Davies, a question. One of the problems we are having is, we have varying determinations in the different regions as to what is clean. Take Superfund. What is a cleaned-up site? Who knows? There are varied interpretations.

I personally feel very strongly that I would rather see Superfund used to do a pretty good job at a site and get 90 percent of it cleaned up and then move your capabilities, your money, your efforts into another terrible place and clean that up 90 to 95 percent, rather than sinking millions of dollars into one site, reaching what is looked on as clean. That is just my own personal view. But it is clear that we have varying degrees of what is considered acceptable cleanup.

Is there any way, through your particular office, to reach a determination that reduces the inconsistencies?

Mr. **Davies**. Well, let me first say that in terms of your personal observation about the priorities in the way that the Superfund program should proceed, I think the Agency is clearly on record as agreeing with those views. Our 90-day study which was completed last month and which has been endorsed by Bill Reilly basically takes that same approach: Let's deal with the major problems and then go back and do the last 5 or 10 percent if we have to, rather than focusing just on a few sites and leaving some others that may be worse unattended.

With regard to the definition of what is safe or how much cleanup one has to have, it is a very difficult problem. I personally have not looked in detail at this aspect of the Superfund program. I would say that there are only a few ways to go about trying to get uniformity in a program that involves thousands of specific sites throughout the country. You can promulgate guidelines of some sort to be adhered to in the regions, and in fact the Agency has done that, but there is, from what I gather, some controversy about the effectiveness of those guidelines. It is very difficult when you are dealing with site-specific cases to get guidelines that really make sense in all the situations you are facing.

One could try to centralize all those decisions in headquarters—that is an alternative way of trying to get uniformity and consistency—but since the program is already under considerable criticism for how slowly it moves, it would be not be accelerated to have all those decisions made in headquarters. So it is a difficult situation.

Senator **Chafee**. I am not going to argue with that. I did not know that you had arrived at this conclusion of trying to do about 90 to 95 percent and then getting on to the next place. We have so many of these sites that are on the national list that are crying for attention, and the longer we leave them, the worse becomes the mess.

The record is going to be open to receive questions for the nominees until 5 today, and we thank you all for coming. We are going to recess now until 11 o'clock, when we will then get into the oil spill markup.

Thank you.

[Whereupon, at 10:46 a.m., the committee recessed, to reconvene at 11 a.m. the same day.]

[The nominees' statements and responses to a committee questionnaire and to additional questions follows:]

STATEMENT OF SENATOR JOHN HEINZ

TIMOTHY B. ATKESON APPOINTMENT TO ASSISTANT ADMINISTRATOR FOR INTERNATIONAL AFFAIRS OF E.P.A.

Mr. President, I am pleased to have this opportunity to enthusiastically support the nomination of Mr. Timothy B. Atkeson to be Assistant Administrator for International Affairs of the U.S. Environmental Protection Agency. I strongly urge my colleagues on the Environment and Public Works Committee to support the confirmation of Mr. Atkeson's nomination for this post.

The pending negotiations and workshops dealing with global environmental conditions require that this new position in the E.P.A. be occupied by an individual with extensive experience in both international affairs and major environmental issues. Atkeson is among the most qualified candidates available to assume this responsibility. His unique background clearly indicates that he will be prepared to face the challenges posed by the rapidly growing problem of world wide environmental protection.

Tim has been involved in environmental issues, both serving in government and in the private sector since 1970. Furthermore, his involvement in the international arena spans back as far as 1958, and includes highly responsible positions such as Deputy General Counsel of the U.S. Development Loan Fund; Regional Level Advisor for Latin America, Agency for International Development; and Special Counsel to the High Level Review Committee at the Inter-American Development Bank. This experience will be vital to the success of E.P.A. programs as modern day environmental policy is inextricably linked to economic policy, particularly in developing nations.

The Assistant Administrator is a new position within the E.P.A.; I am confident that Tim will set the standard for all who follow after him. He has demonstrated that he can assume new posts and make budding programs work. He was the first General Counsel of the Asian Development Bank in Manila, the Philippines, and served in that capacity for three years. When the environment was just beginning to become a major political issue, Mr. Atkeson was one of the pioneers -- at the creation of the Counsel on Environmental Quality in the Executive Office in 1970, Atkeson was appointed General Counsel. He followed this post by becoming

General Counsel of the Congressional Office of Technology Assessment in 1974.

Tim's success outside of government service has been equally impressive. He is one of the legal community's brightest minds in the area of environmental law. Mr. Atkeson started practicing law in Philadelphia, and has been a partner at a prestigious law firm in Washington, D.C. since 1975. Furthermore, he has co-authored a number of books on Superfund litigation and has taught environmental law at some of our nation's finest educational institutions.

For the reasons I have just discussed and because of the credentials I have outlined, I am convinced that Timothy Atkeson is best suited to assume the resposibilities of the Assistant Administrator for International Affairs of the E.P.A. I again impress upon you the importance of an experienced hand in this position, and ask that you confirm the President's nomination of Tim Atkeson.

July 27, 1989

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT OF TIMOTHY B. ATKESON,
ASSISTANT ADMINISTRATOR-DESIGNATE
FOR INTERNATIONAL ACTIVITIES,
U.S. ENVIRONMENTAL PROTECTION AGENCY

It is a pleasure to have this opportunity to appear before your Committee. During my visits, individual members have expressed to me their great interest in EPA's international agenda, and I look forward to working with you on the important international matters for which your Committee has responsibility. You have before you now the President's very significant Clean Air Act proposals including those on acid rain which, when Congress has enacted legislation, will enable us to reach an accord on this subject with Canada. You will have oversight responsibility when the Montreal Protocol on Ozone-Depleting Substances is modified next year to move the phase-out of ozone-depleting substances up to 2000. And following up your hearings this Spring on EPA's report on policy responses to global climate change, you will have oversight responsibility for further hearings on this subject as the Intergovernmental Panel on Climate Change process produces more concrete recommendations on global climate change. I have taken note of the extensive legislative proposals before you on the subject (e.g., S. 676, Sens. Baucus, Durenberger and Lieberman, "Global Environmental Protection Act of 1989"; S. 201, Sens. Gore, Boschwitz, Lieberman, Hollings, Wirth, Simon, Kerry, Reid, Bryan and Sasser, "World Environmental Policy Act of 1989"; S. 491, Sens. Chafee and Baucus, "Stratospheric Ozone and Climate Protection Act of 1989"; S. 333, Sens. Leahy and Jeffords, "Global Environmental Policy Act of 1989"). Ultimately, you will have important responsibility in connection with Senate action on any framework convention on global climate change and the implementing protocols.

I am sure you noted the much greater attention given to international environmental issues at this year's G-7 Summit meeting in Paris. I am also sure you noted that the President set a precedent by taking Bill Reilly to this Summit. Bill told you in his own confirmation hearing before you in January that "As President Bush has requested, international environment issues will be a priority of mine if I am confirmed." Perhaps the fact that Bill was subsequently confirmed by a vote of 100-0 should have warned us that EPA's international agenda would get priority attention. Just to list a few of these developments since then, we should include: The President has laid a foundation in his Clean Air Act proposals for resolving the acid rain controversy with Canada. In March the President authorized U.S. support for the accelerated phase-out of ozone-depleting substances to be made in the Montreal Protocol in London next Spring, the U.S. has imposed tougher U.S. controls on the export of hazardous wastes, the U.S. has increased U.S. research and monitoring on global climate change, and just this month the

President announced U.S. acceptance of the NO_x Protocol to the 1979 ECE Convention on Long-Range Transboundary Air Pollution. All of these items require or authorize EPA to work out international implementing arrangements.

In addition, the President's visits to Poland and Hungary before the Summit illustrate how important environmental issues have become in our bilateral relationships. EPA will be helping the Poles attack air pollution in the Krakow area and will help establish an East European environmental center in Budapest, Hungary. With Canada and Mexico the U.S. environmental involvement is already very large. In time, EPA may want to have environmental attaches on the staffs of our embassies in Ottawa and Mexico City to cover the growing agenda of our shared environmental concerns.

I have tried to do a quick review of the statutes, treaties and executive agreements relating to EPA's existing international environmental activities. They are voluminous. They include legislation such as the Clean Air Act with its provisions to protect the stratospheric ozone layer and reduce transboundary air pollutants and controls on emissions likely to endanger foreign countries. The Clean Water Act contains provisions to promote pollution controls by foreign countries at comparable levels to U.S. controls; authorization of the Great Lakes Water Quality Agreement; provisions on international water pollution and spills of oil and hazardous substances; and provisions on border area waste treatment facilities. The Marine Protection, Research and Sanctuaries Act has important provisions on ocean dumping. The Global Climate Protection Act of 1987 authorizes EPA to develop response policy with respect to global climate change. The provisions of the Foreign Assistance Act (22 U.S.C. Sec. 2151(p)) authorizing assistance to developing countries to develop and strengthen their capacity to manage their environment and natural resources are made applicable to EPA by a Memorandum of Understanding with AID.

Then there are a host of environmental treaties and agreements: The Vienna Convention for the Protection of the Ozone Layer; the Montreal Protocol on Substances that Deplete the Ozone Layer; the ECE Convention on Long-Range Transboundary Air Pollution and its subsidiary protocol on NO_x emissions; the London Dumping Convention; the Great Lakes Water Quality Agreement; the Cartagena Convention on Protection of the Caribbean Marine Environment and supporting oil spills protocol; the 1972 U.S.-USSR Environmental Agreement; and the 1983 U.S.-Mexico Border Environmental Agreement. Finally, there are the statutory provisions requiring EPA to give notice of exports of hazardous waste and pesticides, and to regulate imports and exports of chemicals.

It is in this context of a greatly expanded international agenda that Bill Reilly recommended that EPA create the new position of Assistant Administrator for International Activities and requested that President Bush nominate me for this post. I had served previously with Russell Train and Bill Reilly when I was General Counsel to the Council on Environmental Quality, 1970-1973, and had gained considerable experience working with them on international environmental matters at CEQ. I have also had extensive experience working with developing countries and with international agreements when I served as the first General Counsel to the Asian Development Bank in Manila, 1967-70, and later as Special Counsel to the Inter-American Development Bank last year. Over the last 30 years my practice as a lawyer in and out of government has focused on international and environmental matters. I can only add that the assignment at EPA as Assistant Administrator for International Activities is an immensely exciting and challenging one for which my past experience has been a useful preparation and that it is one in which I will feel highly privileged to serve.

March 1989

Biodata

TIMOTHY B. ATKESON

Born:	April 18, 1927, Philadelphia, Pennsylvania
Residence:	Washington, D. C.
Married:	(Paula Granger; seven sons, one daughter)
Present Position:	Partner, Steptoe & Johnson, Washington, D. C.
Education	Haverford College, BA 1947 Oxford University, MA 1954 Yale Law School, JD 1952

Employment History

a. Associate, Dechert, Price & Rhoads, Philadelphia, Pennsylvania, 1952-1957
b. Deputy General Counsel, U. S. Development Loan Fund, 1958-1961
c. Regional Legal Advisor for Latin America, Agency for International Development, 1961-1962
d. Associate, Partner, Steptoe & Johnson, Washington, D. C., 1962-1967
e. General Counsel, Asian Development Bank, Manila, Philippines, 1967-1969
f. General Counsel, Council on Environmental Quality, Executive Office of the President, 1970-1973
g. General Counsel, Office of Technology Assessment, U . S. Congress, 1974
h. Partner, Steptoe & Johnson, 1975 -
i. Special Counsel, High Level Review Commission, Inter-American Development Bank, 1988

Teaching

Catholic University Law School, Environmental Law, 1972-1973
Dartmouth College, Environmental Law, 1974
Georgetown Law School, Environmental Law, Water Resources, 1980-1985

Selected Publications

Co-author, Environmental Law Institute, "Superfund Deskbook," 1986
Co-author, BNA Special Report, "Superfund: Litigation and Cleanup," 1985
Introduction, Environmental Law Institute, Federal Environmental Law, 1974

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Atkeson (Last) Timothy (First) Breed (Middle)

Position to which nominated: Assistant Administrator-International Activities

Date of Nomination: 6/6/89

Date of birth: 18 April 1927 (Day) (Month) (Year)

Place of birth: Philadelphia, Pennsylvania

Marital status: Married

Full name of spouse: Paula Granger Atkeson

Name and ages of children:
Timothy Granger Atkeson 31
Professor Christopher Atkeson 29
Professor Andrew Atkeson 28
Nicholas Atkeson 27
Mark Atkeson 25
Benjamin Atkeson 19
Erica Atkeson 17
Jonathan Atkeson 16

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Haverford College	1944-47	BA	1947
Oxford University	1947-49	MA	1954
Yale Law School	1949-52	JD	1952

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

U.S. Marine Corps, Private, 1945, Parris Island, S.C., Quanticc

Dechert, Price & Rhoads, Associate 1952-57, Philadelphia, Pa.

U.S. Int'l Cooperation Administration, Attorney Advisor 1957, W

U.S. Development Loan Fund, Deputy Gen. Counsel 1958-61, Wash.,

Agency for Int'l Development, Counsel for Latin America 1961-62 Washington, D. C

Employment record—Continued

Steptoe & Johnson, Associate, Partner 1962-67, Washington, D.

Asian Development Bank, Gen. Counsel 1967-69, Manila, Philippi
Council on Environmental Quality, Executive Office of the President, Gen. Counsel 1970-73, Washington, D. C.
Office of Technology Assessment, U. S. Congress, General Counsel 1974, Washington, D. C.

Steptoe & Johnson, Partner, 1975-89, Washington, D. C.
Inter-American Development Bank, Special Counsel 1988, Washington, D. C.

Environmental Protection Agency, Special Counsel 1989, Washing D.C.

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Haverford College	Phi Beta Kappa
Oxford University	Rhodes Scholar
Yale Law School	Yale Law Journal

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Bar Association	Chairman, Committee on Multinationals and Criminal Enforcement of Environmental Laws	1975 -
Sidwell Friends School	Board Member, Chairman,	1970-79
Environmental Law Institute	Board Member	1974-81, 1988-89
American Farm School in Greece	Board Member	1981-87
Commission on Natural Resources National Research Council	Member 1979-82	
Committee of Concerned Members of Cosmos Club	Treasurer 1982-89	

Qualifications: State fully your qualifications to serve in the position to which you have been named

- Experience with environmental problems and relevant nation
  and international institutions as General Counsel to Counc
  on Environmental Quality, Executive Office of the President
  1970-73
- Experience in international institution building as first
  General Counsel of the Asian Development Bank 1967-69
- Experience generally with environmental issues in law pract
  teaching and writing.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate

Yes. Sever all connections.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No plans.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not appointed for fixed term.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation please state the circumstances of your departure and its timing

Resigned position as General Counsel, Council on Environmenta Quality, in October 1973 at time of resignation of Attorney General and Deputy Attorney General.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.
3. Are any assets pledged? (Add schedule)

No.

4. Are you currently a party to any legal action?

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

6 Has the Internal Revenue Service ever audited your Federal tax return? If so what resulted from the audit?

Yes, audit concluded in my favor.

Potential conflicts of interest

1 Describe any financial or deferred compensation agreements or other continuing dealings with business associates clients or customers who will be affected by policies which you will influence in the position to which you have been nominated

None

2 List any investments obligations liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3 Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Not applicable

5 Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer

By complying with law, regulations and guidance of
EPA Ethics Counsellor.

Political affiliation and activities

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years

None

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

a. Co-author, Environmental Law Institute, "Superfund Deskbook
Washington, D. C. 1986
b. Co-author, BNA Special Report, "Superfund: Litigation and
Cleanup," Washington, D. C. 1985
c. Introduction to Federal Environmental Law, Environmental
Law Institute, Washington, D. C. 1974
d. "Mobilizing New Protection for Natural Resources," Environm
Vol. 29, No. 4, May 1987
e. "International Protection of Intellectual Property," in
Private Investors Abroad - Problems and Solution in International Business, Matthew Bender, New York, 1986

Additional Matters

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

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2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

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AFFIDAVIT

Timothy B. Atkeson) ss. being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Timothy B. Atkeson

Subscribed and sworn before me this 6th day of June, 1989.

Roxanne L. Tucker
Notary Public
My commission expires 6/30/89

July 31, 1989

**Answers by Mr. Timothy Atkeson to Questions
Submitted by Senator Symms**

Q. 1 In your opinion, has the National Environmental Policy Act (NEPA) been a success?

A. In my opinion, NEPA has succeeded in insuring that major Federal actions with a significant effect on the environment receive a much more systematic review from the environmental point of view. This process has had useful results and produced better decisions.

Q. 2 Of the following aspects of NEPA, please identify which have been positive aspects of our domestic U.S. environmental assessment policy, which have not, and why.

A. 2(a) **Judicial Oversight**: I believe judicial oversight of NEPA compliance has been a positive aspect of our domestic U.S. environmental assessment policy because it has provided a powerful and flexible form of enforcement for NEPA.

A. 2(b) **Examination of Alternatives**: I think the NEPA required examination of alternatives has been a positive part of U.S. environmental assessment policy because it makes tangible what options exist for an environmentally preferable result.

A. 2(c) **Cost-Benefit Analysis**: Sec. 1502.23 of the CEQ NEPA Regulations appears to make use of cost-benefit analysis optional in a NEPA statement. Although this seems reasonable, I am unclear as to the contribution it has made to domestic U.S. environmental assessment policy.

A. 2(d) **Review of Impacts by Project Segments**: The usefulness of environmental assessments based on review of impacts by project segments depends very much on the nature of the project and its impacts. It is hard to generalize about the utility of such an approach.

A. 2(e) **Scoping Hearings**: The guidance given on scoping (range of actions, alternatives, and impacts to be considered in an environmental impact statement) in Sec. 1508.25 of the CEQ NEPA Regulations reflects useful experience in application of NEPA.

A. 2(f) **Public Comment**: The process of making environmental assessments available in advance of action for public comment has greatly strengthened the rigor with which NEPA is applied and has increased public confidence in the decisions taken.

A. 2(g) **Preparation of Written Documentation**: The requirement that NEPA impact statements and comments must be in writing has made the assessment process more business-like and systematic.

A. 2(h) **Public Availability of Documents**: The public availability of documents under NEPA, like the public comment process, has greatly strengthened the rigor with which NEPA is applied and has increased public confidence in the decisions taken.

Q. 3 Which of the above aspects of environmental impact assessment would be beneficial to the processes of international lending institutions?

A. For the reasons given in Question 2, examination of alternatives, the scoping process, public comment in advance, preparation of written documentation and public availability of documents would all be beneficial to the process of environmental impact assessment by international lending institutions. The use of cost-benefit analysis and review of impacts by project segments are hard to generalize about; their usefulness depends greatly on the individual project. Judicial oversight would not seem to be relevant to the processes of international lending institutions.

Q. 4 Based on your long experience with international financial institutions, how adequate are the environmental impact assessment processes of each of the following institutions?

A. (i) **The World Bank (IBRD, IDA, IFC, etc.)**: In the past, the principal World Bank's policy direction was provided by Operational Manual Statements, one of which (OMS 2.36) addresses environmental aspects of bank work in general terms.

A. (ii) **The Inter-American Development Bank**: The Inter-American Development Bank recognizes its responsibility for consideration of environmental impacts. It has developed brief statements of broad policy, called "operational policies," one of which addresses the environment (OP-713), and sector guidelines to assist project characterization, including environmental impacts.

A. (iii) **The Asian Development Bank and Fund**: The Asian Development Bank's operations manual describes a general approach to identifying environmental issues and deciding whether further environmental assessment should be undertaken.

A. (iv) **The African Development Bank and Fund**: The African Development Bank's "Practical Recommendations for Environmental Impact Considerations" states that such considerations should be discussed in project appraisals.

A. (v) The United States has called for establishment of environmental assessment procedures for Bank projects permitting an assessment of the environmental setting, likely project impacts and possible alternatives and mitigation measures, and public access. With such information, those responsible for project development and review would be better prepared to integrate environmental considerations into decision-making, as called for in the recent G-7 communique. Such environmental assessment procedures in my view are appropriate and needed.

Q. 5 In your opinion, has unilateral leadership on the part of any one country, the U.S. or any other, ever been a catalyst in improving international bank environmental performance?

A. The U.S. has successfully exercised leadership to catalyze improvements in environmental matters with respect to multilateral development financing institutions. Such leadership may be unilateral in the sense that leadership always involves raising issues and seeking acceptance of views that are not generally seen as issues or accepted as views at the outset. Exercising what influence one may have on behalf of needed improvements is, if you will, a constructive form of unilateralism; imposing, or attempting to impose, those views on others is, in my judgment, usually not constructive. I consider that U.S. initiatives with respect to MDB procedures and specific projects. e.g, the Amazonian highway project, have been constructive. I am not aware of instances of unilaterally imposed outcomes that have been constructive.

Q. 6 In your opinion, could a hard-n-fast rule of "never act unless in multilateral agreement" be taken too far? Is the U.S. bound to concur in activities of the banks even in instances where the American people find those activities environmentally (and perhaps also socially and morally) objectionable?

A. In my view the soundest course in seeking to affect multilateral bank action is to inform the bank of one's views and provide an opportunity for response. If the response is judged unacceptable, one may seek, if need be with the help of others, to change the action or procedure involved. Experience shows that the U.S. representative bodies and the NGO community play an important role in conveying to the multinational banks the importance of environmental problems and constructive solutions to them.

Q. 7 Should the U.S. cast its vote on international lending proposals in favor of loans for which it is known there is great "potential" for environmental disruption, but about whose specific impacts on the environment we are ignorant?

A. The fundamental purpose of the environmental assessment process is to assure the availability of needed information on environmental impacts, alternatives and mitigation options at key decision-points. The U.S. emphasis on the need for banks to develop an environmental assessment process reflects its view of the need to have information about environmental impacts in advance of project approval. Presentation of projects should be managed to assure that the environmental assessment, like other basic feasibility components, is mature.

STATEMENT BY
LINDA FISHER
EPA ASSISTANT ADMINISTRATOR - DESIGNATE
FOR PESTICIDES AND TOXIC SUBSTANCES
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
JULY 27, 1989

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THIS COMMITTEE, IT IS MY GREAT HONOR TO APPEAR BEFORE YOU TODAY AS THE PRESIDENT'S NOMINEE FOR ASSISTANT ADMINISTRATOR FOR THE OFFICE OF PESTICIDES AND TOXIC SUBSTANCES OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

BILL REILLY EMPHASIZED TO ME BOTH HIS AND THE PRESIDENT'S STRONG COMMITMENT TO ENVIRONMENTAL QUALITY, WITHIN THE U.S. AND THROUGHOUT THE WORLD. LET ME ASSURE YOU THAT I AM ALSO COMMITTED TO THIS GOAL, AND IF CONFIRMED, I WILL DEDICATE MYSELF TO PROTECTING PUBLIC HEALTH AND THE QUALITY OF THE ENVIRONMENT.

IN MY SIX YEARS AT EPA, I HAVE SERVED IN MAJOR POLICY FORMULATION ROLES. THESE HAVE PROVIDED ME WITH A MULTI-MEDIA PERSPECTIVE ON EPA'S PROGRAMS THAT WILL BE INVALUABLE IN MY POSITION. HAVING SERVED AS CHIEF OF STAFF TO ADMINISTRATOR LEE THOMAS FOR THREE YEARS, I RECOGNIZE THE NEED TO WORK WITH CONGRESS, ENVIRONMENTAL GROUPS, INDUSTRY, AND THE AGRICULTURAL COMMUNITY TO ACHIEVE OUR DIFFICULT MISSION. EPA CANNOT DO ITS JOB ALONE. WE MUST WORK COOPERATIVELY WITH THE REST OF SOCIETY IN CARRYING OUT THE AGENCY'S GOALS FOR THE BENEFIT OF ALL.

I THINK IT IS ESSENTIAL FOR THE ASSISTANT ADMINISTRATOR FOR PESTICIDES AND TOXICS TO MAINTAIN A RESPONSIVE AND PRODUCTIVE RELATIONSHIP WITH THE VARIOUS CONGRESSIONAL COMMITTEES WITH JURISDICTION OVER THE COMPLEX AND FAR-REACHING PROGRAMS OF THIS

OFFICE. I WILL MAKE THIS RELATIONSHIP WITH CONGRESS A PERSONAL PRIORITY.

THREE BROAD PRINCIPLES WILL GUIDE MY TENURE IN OFFICE, IF CONFIRMED. FIRST, I SHARE BILL REILLY'S BELIEF THAT EPA DECISIONS SHOULD BE BASED ON THE BEST SCIENCE AVAILABLE. AS A NON-SCIENTIST, I WILL RELY HEAVILY ON SCIENTIFIC VIEWS FROM WITHIN THE AGENCY, AS WELL AS INDEPENDENT SOURCES FROM OUTSIDE THE AGENCY.

SECOND, I BELIEVE THE BEST POLICY ON ENVIRONMENTAL POLLUTION IS PREVENTION; IT IS FAR BETTER TO HEAD OFF ENVIRONMENTAL CRISES, THAN TO DEAL WITH THEM ONLY AFTER THEY HAVE REACHED THE FRONT PAGES OF AMERICA'S NEWSPAPERS. BOTH FIFRA AND TSCA ARE SIGNIFICANT TOOLS FOR POLLUTION PREVENTION. THEY BOTH ALLOW THE AGENCY TO REGULATE A CHEMICAL AT ANY STAGE OF A PRODUCT'S LIFE, INCLUDING PRODUCTION, SALE, USE OR DISPOSAL. THE COMMUNITY-RIGHT-TO-KNOW ACT OF 1986 IS ALSO A POLLUTION PREVENTION INITIATIVE WHICH IS STIMULATING PLANT MANAGERS, PUBLIC INTEREST GROUPS, AND GOVERNMENT AGENCIES TO REASSESS THE CURRENT EXTENT OF CHEMICAL USAGE.

FINALLY, I BELIEVE THAT VIGOROUS ENFORCEMENT OF THE LAWS PASSED BY CONGRESS IS AN ESSENTIAL ASPECT OF EFFECTIVE REGULATION OF PESTICIDES AND TOXIC SUBSTANCES, BOTH FOR ACCOMPLISHING SPECIFIC GOALS, AND FOR STRENGTHENING THE PUBLIC'S TRUST IN OUR SHARED COMMITMENT TO PROTECTING HEALTH AND THE ENVIRONMENT.

NOW, I WOULD LIKE TO TURN TO SOME OF THE SPECIFIC PRIORITIES WHICH I EXPECT TO PURSUE.

FOOD SAFETY

I FIRMLY BELIEVE THAT THE U.S. FOOD SUPPLY IS AMONG THE SAFEST IN THE WORLD. YET WE MUST NOT LET DOWN IN OUR EFFORTS TO MAKE A SAFE FOOD SUPPLY EVEN SAFER. THE ALAR CONTROVERSY EARLIER THIS YEAR SHOWS THAT OLD AND INADEQUATELY TESTED PESTICIDES MAY POSE RISKS. THUS, MY PRIORITIES INCLUDE THE NEED TO BUILD PUBLIC CONFIDENCE IN THE WHOLESOMENESS OF THE FOOD SUPPLY BY DEALING QUICKLY WITH PROBLEM PESTICIDES. TO DO SO WE NEED TO STREAMLINE THE DECISION MAKING PROCESS UNDER FIFRA. I AM WORKING WITH USDA, FDA AND THIS CONGRESS TO DEVELOP NEW FOOD SAFETY LEGISLATION WHICH WILL PROVIDE A MORE CONSISTENT APPROACH TO RISK MANAGEMENT AND GIVE US IMPROVED TOOLS TO DEAL WITH PROBLEM PESTICIDES.

IN OUR EFFORTS TO ASSURE THE AMERICAN PUBLIC THAT OUR FOOD SUPPLY IS SAFE, EPA HAS BEGUN SYSTEMATICALLY REEXAMINING ALL PESTICIDE PRODUCTS TO MAKE SURE THAT THESE PREVIOUSLY REGISTERED PESTICIDES MEET CURRENT SCIENTIFIC STANDARDS. THE 1988 AMENDMENTS TO FIFRA REQUIRE EPA TO SPEED UP RE-REGISTRATION, AND SO FAR, THE AGENCY HAS MET EVERY DEADLINE CONTAINED IN THAT AMBITIOUS SCHEDULE. IT IS MY INTENT TO CARRY OUT THE MANDATE OF THE 1988 AMENDMENTS TO MAKE SURE WE FINISH THIS TASK AS SOON AS POSSIBLE. THE COMPREHENSIVE REVIEW AND RE-REGISTRATION OF PESTICIDE PRODUCTS REPRESENTS THE LONG-TERM SOLUTION TO THE LONG-STANDING PROBLEM

OF INADEQUATELY TESTED PESTICIDES; THE AMERICAN PUBLIC WANTS AND DESERVES THE ASSURANCE THAT THESE PRODUCTS, USED IN OUR HOMES AND ON OUR FOODS, ARE THOROUGHLY EVALUATED BY MODERN STANDARDS.

TOXICS CONTROL

I AM VERY SENSITIVE TO THE NEED FOR EXERCISING STRONG CONTROLS ON TOXIC SUBSTANCES BEFORE, DURING AND AFTER MANUFACTURING. TSCA IS A POTENT FORCE FOR HALTING THE INTRODUCTION OF RISKY TOXIC CHEMICALS INTO THE ENVIRONMENT. IT PROVIDES THE TOOLS TO CAREFULLY REVIEW NEW CHEMICALS AND BROAD AUTHORITY TO DEAL WITH EXISTING CHEMICALS. THE RECENTLY ANNOUNCED ASBESTOS BAN REALIZED UNDER TSCA IS A HIGH WATER MARK IN THIS AGENCY'S COMMITMENT TO A CROSS-MEDIA EFFORT TO PROTECT THE ENVIRONMENT. THE PRODUCTS OF BIOTECHNOLOGY PRESENT SPECIAL CHALLENGES TO BOTH TSCA AND FIFRA PROGRAMS TO REGULATE ADEQUATELY THIS CATEGORY OF NEW PRODUCTS, WITHOUT STIFLING INNOVATION IN A NEWLY EMERGING INDUSTRY.

CHLORO-FLUORO-CARBONS (CFC S) IN THE ENVIRONMENT ARE A MAJOR CONCERN OF THIS AGENCY, AND IT WILL BE ONE OF MY RESPONSIBILITIES AS ASSISTANT ADMINISTRATOR TO MAKE SURE MY OFFICE IS DOING ALL IT CAN TO ADDRESS THIS ISSUE. SPECIFICALLY, AS WE IMPLEMENT THE PHASE-DOWN OF CFC'S, WE MUST GET ADEQUATE INFORMATION ON POTENTIAL SUSTITUTES TO ENSURE THAT WE DO NOT CREATE NEW HEALTH AND ENVIRONMENTAL PROBLEMS. THE PHASE-OUT OF CFC'S IS AN EXAMPLE OF A CROSS-CUTTING ISSUE AMONG EPA PROGRAMS, IN WHICH TSCA

INFORMATION GATHERING AUTHORITY ON CHEMICAL PRODUCTS OFFERS SIGNIFICANT SUPPORT TO OTHER PROGRAMS.

ANOTHER CROSS-CUTTING ISSUE OF INCREASING CONCERN ACROSS THE COUNTRY IS GROUND-WATER QUALITY. PESTICIDES ARE A MAJOR CONCERN IN THE GROUND WATER ISSUE, AND I AM COMMITTED TO CONTINUING THE EFFORTS NOW UNDERWAY TO DEVELOP A SENSIBLE AND PRACTICAL STRATEGY FOR PROTECTION OF OUR GROUND WATER RESOURCES.

INTERNATIONAL ISSUES

THE PROBLEMS OF POLLUTION OBVIOUSLY TRANSCEND NATIONAL BOUNDARIES AND I WILL CONTINUE TO MAKE IT A HIGH PRIORITY TO WORK WITH INTERNATIONAL ORGANIZATIONS SUCH AS THE UNITED NATIONS ENVIRONMENT PROGRAM (UNEP), THE WORLD HEALTH ORGANIZATION (WHO), THE FOOD AND AGRICULTURAL ORGANIZATION (FAO), THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), AND THE NEW EUROPEAN COMMUNITY, IN URGING A GLOBAL APPROACH TO ENVIRONMENTAL PROBLEMS. I SHARE THE ADMINISTRATOR'S BELIEF THAT WE SHOULD PLAY A LARGER ROLE IN THE INTERNATIONAL SCENE, AND I'VE HAD AN OPPORTUNITY TO INTERACT WITH SOME OF THESE ORGANIZATIONS IN THE PAST. IT IS IMPORTANT THAT WE IMPROVE INTERNATIONAL COOPERATION WITH RESPECT TO REGULATIONS, STANDARDIZED TESTING TECHNIQUES, AND THE SHARING OF DATA AMONG COUNTRIES. I ALSO INTEND TO EXPAND EPA'S INVOLVEMENT IN INTERNATIONAL EFFORTS TO HELP LESS DEVELOPED COUNTRIES TO IMPROVE THEIR OWN CAPABILITIES TO REGULATE AND USE

PESTICIDES AND TOXIC SUBSTANCES, AND TO HAVE ADEQUATE INFORMATION ABOUT PRODUCTS BEING IMPORTED INTO THEIR COUNTRIES.

ENFORCEMENT

IT IS IMPORTANT THAT WE ENHANCE OUR ENFORCEMENT OF EXISTING LAWS. TO ACCOMPLISH THIS BETTER, WE NEED TO BOLSTER THE FRONT LINES OF ENFORCEMENT AT THE STATE LEVEL BY PROVIDING THEM WITH SUFFICIENT TOOLS. I INTEND TO CONTINUE THE POLICIES OF JACK MOORE IN STRENGTHENING THE ROLE OF STATES IN THIS AREA AND PROVIDING THE NECESSARY RESOURCES DEDICATED TO THIS GOAL.

IN CONCLUSION, MY PRIORITIES ARE TO BUILD UPON THOSE ESTABLISHED BY THE PRESIDENT, ADMINISTRATOR REILLY, AND THE CONGRESS. THEY INCLUDE A CONTINUATION OF MANY VALUABLE INITIATIVES UNDERTAKEN BY JACK MOORE AND LEE THOMAS. I LOOK FORWARD TO THE CHALLENGES PRESENTED BY THIS POSITION. I WILL BE WORKING WITH YOU, ON THIS COMMITTEE, AND OTHERS IN THE CONGRESS, AS I MOVE AGGRESSIVELY TO CARRY OUT THE MISSION OF EPA AS THE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF PESTICIDES AND TOXIC SUBSTANCES. THANK YOU.

LINDA J. FISHER

Home Address

1233 Portner
Alexandria, VA 22314

Office Address

401 M Street, S.W.
Washington, D.C. 20460

PROFESSIONAL EMPLOYMENT

U.S. ENVIRONMENTAL PROTECTION AGENCY

ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING AND EVALUATION : Appointed by President Reagan
January 1988 - Present

- Confirmed by the Senate December 1987.
- Serves as chief policy and political advisor to the Administrator.
- Manages an office with a budget of $30 million dollars and 300 employees.
- Oversees the development of all environmental regulations and policies, with responsibility for economic impact analysis.
- Manages policy analysis and development on major environmental issues such as global warming, pollution prevention, risk communication, acid rain, Clean Air Act Reauthorization.
- Serves as principal liaison with the White House and the Office of Management of Budget on environmental policy matters.
- Member of the Domestic Policy Council Working Group on Energy and Natural Resources.
- Manages the Agency's central management, tracking and planning systems.
- Represents the Administration and the Agency before Congress, the press and the public on numerous environmental issues.
- Represents the Administrator and Agency in international fora on environmental issues.

CHIEF OF STAFF TO THE ADMINISTRATOR 1/85 - 1/88

- Served as chief policy and political advisor to the Administrator.
- Chief of Staff and manager of the Offices of the Administrator consisting of 45 full-time employees and $1.9 million.

- Chaired Task Force on Superfund Amendments Reauthorization Act which was signed into law by President Reagan on October 17, 1986.
  - Managed inter-Agency Task Force consisting of 50 people from 5 Departments to develop and draft the Administration bill and Agency positions on Amendment.
  - Served as Administration and Agency spokesperson and negotiator on the legislation as it moved through 11 Committees of the House and Senate.
  - Testified on behalf of the Agency before several Committees and Subcommittees on the legislation.
- Participated in selection and hiring of senior political managers of the Agency.
- Represented the Administrator before federal, state and local government groups as well as private industry and citizen groups.

SPECIAL ASSISTANT TO THE ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE July 1983 - December 1984

- Chaired Task Force on Superfund Reauthorization to formulate Agency position on amendments and represent them to Congress.
- Served as chief liaison for the Assistant Administrator to Congress, state and local groups and citizen groups.
- Chaired Task Force on Reauthorization of Resource Conservation and Recovery Act to formulate Agency positions and represent them to Congress.
- Served as political advisor to Assistant Administrator.
- Conducted special assignments for the Administrator.

CHESTER, HOFFMAN & WILLCOX

LAW CLERK FEBRUARY 1982 - JUNE 1983

- Drafted motions and supporting memoranda, pleadings, trial briefs on corporate and labor issues.

U.S. HOUSE OF REPRESENTATIVES - HOUSE APPROPRIATIONS COMMITTEE

ASSOCIATE STAFF MEMBER 1979 - 9/80

- Analysis of all appropriation bills, federal agency and program budgets.
- Covered hearings, drafted amendments, prepared legislative briefs.

LIAISON TO HOUSE BUDGET COMMITTEE
- Extensive research on the federal budget, including all federal departments, agency and major programs.
- Drafted major budget legislation.
- Coordinated strategy for Committee and House consideration of legislation.

CONGRESSMAN RALPH REGULA

LEGISLATIVE ASSISTANT 1976-78

- Responsible for legislation on energy, environment, health, campaign finance, labor.
- Wrote legislative briefs, amendments, and speeches.
- Liaison with federal agencies and industry lobbyists.
- Public speaking on energy issues and the legislative process.

CONGRESSMAN CLARENCE J. BROWN

LEGISLATIVE ASSISTANT 1974-76

- Responsible for legislation on domestic issues.
- Drafted legislative briefs, amendments, speeches and correspondence.
- Liaison with federal agency and industry lobbyists.

EDUCATION

Juris Doctor	The Ohio State University, College of Law, 1983
Master in Business Administration	George Washington University, 1978 Finance & Investments
Bachelor of Arts	Miami University, 1974 History University of Hawaii, Summer 1973
	Admitted to Ohio Bar, 1983
	Admitted to D.C. Bar, 1988

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Fisher (Last) Linda (First) Jane (Middle)

Position to which nominated: Assistant Administrator for Pesticides and Toxic Substances

Date of Nomination: July 17, 1989

Date of birth: 26-6-52 (Day) (Month) (Year)

Place of birth: Saginaw, Michigan

Marital status: Single

Full name of spouse:

Name and ages of children:

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Miami University	9/70-6/74	B.A.	6/74
University of Hawaii	Summer 1973	—	—
George Washington University	9/75-12/77	M.B.A.	2/78
Ohio State University	9/80-12/82	J.D.	12/82

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

1. Legislative Assistant to Congressman Clarence J. Brown (R-OH) Washington, D.C. 7/74-1/76
2. Legislative Assistant to Congressman Ralph S. Regula (R-OH) Washington, D.C. 1/76-12/78
3. Associate Staff Member - House Appropriations Committee Washington, D.C. , 1/79-9/80
4. Law Clerk, Chester, Hoffman, Wilcox - Columbus, Ohio 198 1983

Employment record—Continued

5. Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response - 7/83 - 12/84
6. Executive Assistant/Chief of Staff to the Administrator, EPA 1985-1/88
7. Assistant Administrator for Policy, Planning and Evaluation, EPA 1/88 to present

Resume attached

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

E.P.A.
Unusually Outstanding Performance Award - 1984

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Delta Gama		1970-1974
Miami University Student Foundation	Steering Committee	1973-1974
Miami University Alumni Club	Steering Committee	1975-Present
O.S.U. Student Bar Assoc.	Student Rep.	1981-1982
Ohio State Bar Assoc.		1983-1987
Miami University Alumni Bd.		1984-1985
D.C Bar		1988-Present
Ohio Bar		1983-Presnet

Qualifications: State fully your qualifications to serve in the position to which you have been named.

I believe my strongest qualification for this position is my substantive knowledge of environmental issues and the experience I have gained in the last six years as the Assistant Administrator for the Office of Policy, Planning and Evaluation and Chief of Staff to the Administrator. I have managed an office of over 200 staff, served as key policy advisor for all Agency programs and over the last two years was a key negotiator on international global climate issues. From 1985 - 1988, I served as the Administrator's Chief of Staff where I was the principal advisor on legislation and Agency policies in all program areas. During these years, I participated actively in the legislative process that resulted in enactment of some of EPA's most important statutes. This experience has given me a good understanding of the legislative history and philosophy that supports our laws.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will continue to be employed by EPA

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

Promotion within the EPA

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None

3. Are any assets pledged? (Add schedule).

No

4. Are you currently a party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

There should be no conflict of interest.

5. **Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.**

I will fully comply with all conflict of interest laws and regulations applicable to this position and the Agency.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

Statewide - 1982 - Saxbe for Attorney General Committee - Fund Raising, finance
1982 - Clarence J. Brown for Governor - Volunteer issue development
Local - 1981 - Columbus City Council - Snyder for Council Committee - Scheduler, issue development
- 1980 - Door-to-door volunteer work
- 1980-83 - Membership Republican Women's Roundtable - Franklin County Republican Party

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

1. Statement before the Committee on Environment and Public Works, U.S. Senate, December 8, 1987
2. Speech before the American Cast Metals Association, March 8, 1988
3. Testimony before Subcommittee on Human Rights and International Organizations, Committee on Foreign Affairs, March 10, 1988
4. Statement before Subcommittee on Conservation and Forestry, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate March 24, 1988
5. Testimony before Subcommittee on Energy and Power, Committee on Energy and Commerce, U.S. House of Representatives, Sept. 22, 1988
6. Testimony before Subcommittee on Water and Power Resources, Committee on Interior and Insular Affairs, U.S. House of Representatives, September 27, 1988

7. Speech, Environmental Risk to Lenders, Seminar Radisson Mark Plaza Hotel, Alexandria, VA, October 6, 1988

8. Testimony before the Senate Agriculture Committee December 1, 1988

9. Testimony before the Subcommittee on Foreign Operations, Export Financing, and Related Programs, Committee on Appropriations, Feb. 21, 1989

10. Statement before the Subcommittee of Environment, Energy and Natural Resources, Government Operations Committee, May 3, 1989

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

(speeches/testimony continued)

11. Testimony before the Subcommittee on Energy and Power, Energy and Commerce Committee, May 4, 1989

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

Linda J. Fisher) ss. being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Linda J. Fisher

Subscribed and sworn before me this 25th day of July, 1989

Notary Public

NOTARY PUBLIC
DISTRICT OF COLUMBIA

MY COMMISSION EXPIRES APRIL 14, 1994

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 1 1989

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

Honorable Quentin N. Burdick
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

At my confirmation hearing of July 27, 1989, it was requested that the Agency respond to a number of questions related to pesticide policy. I am pleased to enclose our responses to those questions. I hope this information is helpful.

I appreciated the opportunity to state my positions on some of the most important issues facing the Environmental Protection Agency. I look forward to working with you and the other members of the Committee.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely yours,

Linda J. Fisher

Linda J. Fisher
Assistant Administrator Designate
for Pesticides
and Toxic Substances

Enclosures

RESPONSE TO QUESTION FROM SENATOR BURDICK

Question.

The issue has been raised that it is customary for the Assistant Administrator for Pesticides and Toxic Substances to have a scientific background. Can you respond to concerns that your legal training may not fully prepare you for all the science based issues you will be called upon to resolve?

Answer.

I fully appreciate the fact that scientific evidence plays a significant role in nearly all of the regulatory decisions involving the pesticide and toxic substances programs. It is also true that two of my predecessors in this position had science backgrounds. However, I would like to point out that EPA has numerous scientists, representing a wide variety of different disciplines on its own staff, and has also established procedures for obtaining independent peer review of particularly significant science issues through such mechanisms as the FIFRA Scientific Advisory Panel or the Science Advisory Board. Thus, I am confident that I will be getting high quality scientific assessments of the issues that come before me, if I am confirmed in this position.

Scientific evidence determines the nature and extent of a risk to health or the environment; as such it is only part of the decision process. Having assessed a risk using the best evidence and scientific judgment available, it then remains for the EPA decision maker to manage that risk. At that point, the scientific issues must be weighed in the context of policy judgments and the application of existing statutory requirements. I think my legal training, as well as my six years of experience in policy analysis and formulation at EPA, have been an appropriate preparation for the challenges involved in applying the TSCA and FIFRA statutes in order to achieve the balanced regulatory system envisioned by Congress in these laws.

BURDICK

Q. An issue of concern to me and other members of the Committee is the asbestos control program.

Part A. What are your views on developing a regulatory program to address asbestos in public and commercial buildings?

Answer

I will want to assess in depth the thorough and careful study which EPA did on this subject for Congress in February of 1988 ("Study of Asbestos-Containing Materials in Public Buildings") mandated by AHERA. In summary, EPA concluded that a comprehensive regulatory inspection or abatement program, such as recently implemented under AHERA for schools, is not appropriate at this time for public and commercial buildings.

Primarily, EPA was concerned that such an undertaking may stimulate more asbestos removal actions in these buildings during the next few years than the infrastructure of capable accredited professionals and government enforcement personnel could handle. Improperly performed or ill-timed removal can actually aggravate an asbestos exposure problem rather than solve it.

Second, Administrator Thomas concluded that EPA needs to continue the primary focus on schools, where risk -- to our children -- may be highest. The AHERA school rule activities is stretching the available resources of trained and accredited inspectors, contractors and laboratories to their limits, along with the compliance assistance and enforcement capabilities of the various levels of government. A great deal of effort over the past two years has gone into the schools program and we must be very careful now not to take action which might undermine its success.

Finally, the Administrator believed that the country should not embark upon a large, costly new regulatory program of asbestos control without first addressing basic questions which could significantly improve the effectiveness of the response in public and commercial buildings. EPA has already begun activities to determine if the AHERA schools rule approach is working as intended in schools and if the approach, in whole or in part, might be appropriate for other buildings. EPA also plans to undertake some basic research, identified in the Report and endorsed by Congress, to learn more about the magnitude of asbestos exposure, particularly "peak" exposures, in these buildings and the efficacy of alternative abatement actions.

Rather than promulgating immediate new rules, EPA has begun a guidance, technical assistance, outreach and enforcement enhancement program to:

o increase the number of reliable accredited experts who provide counsel on abatement options or conduct abatement activities;

o improve the technical knowledge and capabilities of buildings owners, contractors, workers and others involved in asbestos management and control;

o institute a special technical assistance program for thermal system insulation, primarily pipe wrapping, which is more common, more often damaged and of greater asbestos content than other asbestos materials. (Generally, it is also easier, faster and cheaper to abate.); and

o assess our present AHERA schools rule efforts and conduct the key research noted above.

This position should not be interpreted as ruling out an inspection rule or even greater Federal regulation of public and commercial buildings at some time in the future. As the Administrator noted in the Report, this is a question the Agency intends to address in about three years, after we have had more experience with the AHERA schools rule, have dealt with the large surge of demand for trained and qualified professionals, and have completed the assessments and studies.

As the Agency completes the activities listed above, Agency staff plans to work very closely and productively with the building community, worker and professional groups, State and other Federal agencies, industry and others now involved in asbestos management and control. In fact, we convened these groups in a dialogue process this spring and summer to identify actions which governmental and private groups should take to address asbestos in public and commercial buildings. We have pledged to bring any programmatic or regulatory steps which receive consensual support to the Agency's top management for consideration.

Activities such as these will ensure that, as the facts become clearer, we are in an increasingly better position to move quickly, effectively and efficiently with any subsequent actions, including regulatory actions, which may be warranted.

Q. **Part B. How do you think the asbestos in schools program is going and do you plan to make any changes?**

Answer

The Asbestos Hazard Emergency Response Act (AHERA) school program has been a significant undertaking since its passage in 1986, but we are making progress.

A number of key dates for school compliance with AHERA are already past. On October 12, 1988, schools should have completed their asbestos inspections and submitted management plans to the States, unless the school received a State-approved deferral permitted by the AHERA amendment of 1988. By May 9, 1989, even those schools with deferrals were to complete inspections and submit plans. As of July 9, 1989, the law required all schools to begin implementing their management plans.

Based upon State reports last October, we found that about 79% of the nation's public and private schools were in compliance in that they had either submitted a plan or received an approved deferral. Although States are not required by law to report additional compliance information until December 1989, we are presently completing a State survey. Early indications are that it will show higher compliance with the May 9th date, particularly for public school districts which represent a large percentage of the nation's students. We believe that the new compliance data will reflect the success of EPA's extensive financial assistance, outreach and technical assistance efforts, as well as the commitment that schools themselves are making to comply with the law.

The AHERA school inspection, management planning and response program does, however, involve significant costs for schools. In total, the Agency estimated the requirements of AHERA to cost schools about $3.145 billion over the next 30 years, and some contractors and school organizations contend that these costs estimates are low, given their experience since AHERA school rule promulgation in October 1987.

Congress has tried to help offset these costs. Since 1985, we have provided about $202 million for almost 2,200 individual asbestos abatement projects in 1,600 schools, administered by nearly 800 local education agencies (public school districts or private schools). This includes $45 million awarded for 401 school projects in late April 1989.

These awards are made under the Asbestos School Hazard Abatement Act (ASHAA) loan and grant program, which authorizes financial assistance to public and private primary and secondary schools with financial need and serious asbestos hazards, in accordance with annual congressional appropriations. The program has eliminated approximately 17.3 million exposure hours each week to school children, teachers and service workers. Another year of funding is authorized by ASHAA, passed in 1984.

EPA has also provided $20 million, through 31 States and territories, to help needy schools conduct asbestos inspections and develop management plans required by AHERA.

Since 1987, EPA has conducted nearly a dozen direct mailings to the nation's public school districts and private schools transmitting AHERA guidance, technical information, ASHAA loan and grant applications and other materials to facilitate their efforts to comply with AHERA. EPA also hosted a national AHERA teleconference in April 1988 on public television and sponsored training last summer of State officials who may review school management plans.

This summer, we completed the "ABCs of Asbestos in Schools," a guide to AHERA rule requirements for parents and teachers jointly developed with the National Education Association (NEA) and the National PTA. Thousands of copies have already been distributed through EPA, NEA and PTA offices. We've also established a new "hazards-in-schools" coordination committee, which unites our asbestos, radon, lead-in-drinking-water and indoor air programs to improve our communications with the schools community. We are also completing several projects to improve in-place management of asbestos, including a model course for training school service personnel and a new guide for special asbestos operations and maintenance.

You asked whether we plan to make any changes. At the present time, we have underway a comprehensive evaluation of the AHERA program, to be completed in 1991. If this evaluation reveals the need for changes, we will take action to put those changes in place.

LAUTENBERG

Q. Given the fact that it took EPA 9 months to make the data from the first 313 reporting available, can you speed-up the process by which this data is made available to the public?

Answer

Hard copies of individual 313 reports are made available to the public as soon as they are entered into the EPA database. This process takes about six months to complete, although many forms are available to the public within 6-8 weeks after receipt. EPA responded to hundreds of requests for information on paper well before the data was fully computerized.

Data entry and quality control of more than 75,000 TRI forms is a labor-intensive and time consuming task. EPA has gained a great deal of experience from the first year of TRI reporting and will be able to streamline some of the activities in the second year, and eliminate others all together. This should enable EPA to speed up data entry of individual forms, even as greater numbers of forms are handled by the system. In addition, the National Library of Medicine's system for public access is in place, so that we will not be faced this year with the full-scale task of developing and implementing a computer-accessible delivery system.

Q. When will the 1988 313 data be available to the public?

Answer

Copies of paper records will be available as soon as they are entered into EPA's database and are accessible through EPA's TRI Reporting Center at L'Enfant Plaza.

The timing for computer access to the data is more difficult to predict since some of the savings due to streamlined procedures will be offset by the larger numbers of forms received this year, and the need for new programming efforts to enable the system to link 1987 and 1988 data. Our best estimate is that 1988 data will become available in April of 1990, two months earlier than this year.

LAUTENBERG

Q. What is EPA doing to improve the 313 enforcement? How will enforcement be targeted? Describe the enforcement related FTE allocations for headquarters and the regions. Will additional FTEs be added to 313 enforcement?

Answer

This year a training course was conducted for all new EPCRA inspectors, and a training manual has been developed for them. An additional course dealing with data quality is being developed for FY 1990.

A software package is being developed that will aid the regions in targeting for compliance. This software will compare different sources of information in order to most efficiently target inspections. The pilot system should be available for use by the EPA regional offices in FY 1990.

EPA is currently having an independent neutral survey performed in which facilities within the designated SIC codes that did not submit forms are being randomly called to see if they should have reported. Another independent survey is also being conducted. This one deals with inspectors that are going to the facilities that did report and checking on the quality of their report. The results of these two independent surveys should be available late this fall, and will be used to improve targeting for the compliance program.

The Agency is also beginning to analyze the inspection targeting efficiency of the EPCRA compliance program. Although a complete assessment cannot be made until the fiscal year is completed and all inspection data is reviewed, the assessment should provide information on which industrial categories may require greater surveillance in order to achieve full compliance.

During fiscal year 1989, 11 FTEs (3 at headquarters and 8 in the regions) have been dedicated to the EPCRA compliance program. These resources have been supplemented by 25 positions under a grant with the American Association of Retired Persons. The same level of effort will continue into the 1990 fiscal year. An additional one million dollars in extramural funds is being dedicated to the EPCRA compliance program in FY 1990 to provide additional contract inspection and compliance program support.

PESPONSE TO QUESTION FOR LINDA FISHER SUBMITTED JULY 27, 1989, BY SENATOR REID.

Question 1. Several members of this Committee (Warner, Chafee and Reid) were involved in efforts to have daminozide - also known as Alar - removed from the market.

How will the Administration's proposed amendments to FIFRA prevent the continued use of a hazardous pesticide during the cancellation process?

What is the timetable for action on the proposals? Will EPA move forward if Congress does not?

Answers. The proposed amendments include two types of suspension action which can be used to remove a pesticide from the market prior to the completion of cancellation procedures. The most stringent action would be called suspension, which would be based on a finding of "imminent hazard". Although "imminent hazard" is the same term now used in FIFRA, the draft proposals include a new definition of this term, which focuses on a finding of significant risks to public health or the environment, taking into account potential health-based impacts, but not economic benefits, which might justify continued use of the pesticide. This is a significant change, since the current statutory definition of "imminent hazard" requires the Agency to evaluate economic benefits as well as health factors in considering a suspension action.

The second type of suspension action would be "interim withdrawal", which is designed to deal with the type of situation represented by Alar. As EPA sees it, interim withdrawal would be appropriate for a pesticide where the evidence of its risk does not warrant emergency action, and yet there is a scientific basis for concern about risks being incurred by the public during the approximately two-year period needed to pursue a definitive evaluation of risks and benefits through the cancellation process. For an interim withdrawal, the Agency is proposing that the risks of concern be limited to human health, and that the product could not be removed from the marketplace if there is no alternative means of pest control and loss of the chemical would cause significant disruption to the agricultural economy. Enclosed are copies of our most recent draft proposals for your further consideration.

On the questions of timing and Agency plans, let me point out that EPA has developed its proposals through an inter-agency workgroup process organized through the Domestic Policy Council. Up to now, this has been a fairly informal process of consultation and exchange of views and comments. This stage should be completed within the next week to ten days. The next step would be to have the Domestic Policy Council itself take up this issue, including any unresolved concerns on the part of participating agencies, and decide how and when to proceed. I think it would be inappropriate for me to speculate further at this point on how the Administration will choose to proceed.

If the Congress does not enact FIFRA amendments, then the Agency will of course proceed under the current law,and we will also examine the possibility of administrative improvements. It is not EPA's position that the current FIFRA is fatally flawed. The amendments we are proposing are, in our view, improvements to make the pesticide regulatory system more responsive and efficient in dealing with risky pesticides, which we believe both the Congress and the public are demanding. However, the current system has been used for many years to evaluate the risks and benefits of pesticides, and dozens of potentially hazardous chemicals have been removed from the market under these procedures.

Question 2.

Senator Lieberman and I raised several concerns about the FIFRA Scientific Advisory Panel (SAP) and its role in the registration process.

> How does EPA determine what types of outside consulting by members of the panel is permissible? Are guidelines about permissible activities provided to the SAP members?
>
> How does EPA chose the members of the SAP? Senator Lieberman and I believe the panel should be expanded to include public health officials and pediatricians. Would you expand the SAP or make any other changes?

SAP members are subject to the conflict of interest rules that apply to Special Government Employees. Basically, such employees may not engage in outside activities which present a conflict of interest with their government position; that is, they are precluded from participating in any decision in which they or their non-government employers have a financial interest in the outcome. It is important that we obtain the best qualified individuals for these positions to reflect state-of-art knowledge in their specific scientific field. Because their expertise is in high demand, they frequently consult with chemical companies. While we recognize the importance of avoiding conflict of interest to maintain objectivity in decision making, we also believe that the total elimination of all outside consulting would lower the quality of SAP membership. Current requirements dealing with conflict of interest provide that SAP members must recuse themselves from decisions involving any companies for which they are currently consulting. Additional restrictions on post-employment activities of former SAP members also apply.

I believe that there is a concern about "outside consulting" that foes beyond the important issue of specific conflicts of interest. This is a general concern for the objectivity of the Panel's membership. I believe the Panel should be comprised, not only of a mix of technical expertise, but also represent a spectrum of approaches on the interpretation of risk assessments. As a non-scientist, it is important to me to have an independent review of the scientific analyses performed within the Agency, which addresses the strengths and weaknesses from a variety of viewpoints. As the Agency moves to add new people to the Panel,we will be looking not only to continue the mix of technical expertise, but also to broaden the diversity of the membership.

Let me explain what types of expertise EPA seeks in the nominees to the SAP. In determining the specific scientific discipline(s) which are needed to advise the Agency, we consider the types of issues which the SAP has addressed, as well as the issues expected to arise in the future. Often, the scientific issues presented to the Panel have dealt with the carcinogenicity of selected pesticides which the Agency has reviewed in its Peer

Review process or for which Special Review has been initiated. Such issues benefit from comments by experts in several fields including a toxicologist knowledgeable in the evaluation of animal laboratory studies of carcinogens and the variables to be considered in extrapolating these data to human risk assessment, a veterinary pathologist capable of evaluating the significance of pathological changes in several species for relevance to humans, and a biostatistician to review the statistical evidence in relation to human risk assessment.

I also wish to note that FIFRA requires the SAP members "be selected on the basis of their professional qualifications to assess the impacts of pesticides on health and the environment." Since this assessment usually turns on the evaluation of laboratory and controlled field studies, the training and experience of pediatricians would seldom be useful.

Although the membership of the SAP is limited by law to seven members, who serve staggered appointments, the Agency routinely brings scientists with specific expertise to assist SAP members on issues requiring such expertise. We make every effort to have a balance of expertise on the standing SAP and to supplement this expertise, as necessary. The principal requirement for membership is the technical qualifications the review the Agency's scientific analysis which serves as the basis for assessing the effects of the impact of pesticides on health and the environment.

Finally, I wish to note that EPA is not limited to the SAP membership for scientific peer review. We routinely consult with other independent scientists, such as groups convened through the National Academy of Science or individuals through consulting contracts, to obtain additional review and assistance in our scientific analysis.

RESPONSE TO QUESTION FOR LINDA FISHER SUBMITTED JULY 27, 1989, BY SENATOR REID.

Question 3. Please describe the Office of Pesticides and Toxic Substances. Are the resources (staff and funds) sufficient to address the many demands before you?

Answer. Given the rather broad scope of this question, I am attaching to this answer brief narrative summary of each program, and the personnel and funding levels for 1988, 1989, and the figures from the President's 1990 budget. Both the Toxics and Pesticides programs include enforcement activities, which are included in the summaries for each program.

As you know, the Office of Pesticides and Toxic Substances differ from other EPA programs primarily in that they are both aimed at gathering information on, and regulating the marketing, use and disposal of chemical products, rather than dealing directly with pollution of environmental media. The summaries I have provided indicate the scope of these activities by including actual and projected tallies of the different types of actions taken.

In general terms, we have resources adequate to carry out our current program activities. However, there is an area of concern about future resources that should be noted. The 1988 amendments to FIFRA placed significant new burdens on the Agency in terms of reviewing testing data on pesticides within certain deadlines. The amendments also provided new resources in the form of annual registration maintenence fees on individual products, and one-time re-registration fees on active ingredients. It is not clear at this stage of our implementation of the 1988 amendments how many end-use products or active ingredients will remain on the market and pay these fees which are needed to support the accelerated review envisioned by Congress. We are in the process of recruiting additional staff and setting up the data management systems needed to accomplish the job, but it is likely that the fee structure now in place will need to be revisited, once we have a clearer picture of the universe of products being actively supported by the pesticide registrants.

PESTICIDES

	ACTUAL 1988	ENACTED 1989	CURRENT ESTIMATE 1989	REQUEST 1990	INCREASE + DECREASE - 1990 VS 1989
	(DOLLARS IN THOUSANDS)				
APPROPRIATION					
Salaries & Expenses	$40,909.1	$42,012.4	$41,619.3	$47,365.0	$5,745.7
Abatement Control and Compliance	$34,625.1	$74,143.1	$73,938.8	$55,329.3	-$18,609.5
Research & Development	$6,804.9	$8,122.8	$7,789.3	$7,530.3	-$259.0
TOTAL, Pesticides	$82,339.1	$124,278.3	$123,347.4	$110,224.6	-$13,122.8
PERMANENT WORKYEARS	770.8	824.0	816.0	853.3	37.3
TOTAL WORKYEARS	820.1	831.0	822.8	853.3	30.5
OUTLAYS	$77,918.8	$107,707.7	$106,905.9	$107,138.7	$232.8
AUTHORIZATION LEVELS	Authorization for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) expired September 30, 1986. The FIFRA Amendments of 1988 reauthorized this program at a level of $83,000.0 for 1989, and $95,000.0 for 1990.				

PESTICIDES

OVERVIEW AND STRATEGY

Pesticides are among the most beneficial and the most hazardous of substances. Pesticide products provide benefits to society, contributing to agricultural productivity and controlling human diseases. Yet they are inherently hazardous since they are specifically formulated to be injurious to living target organisms, and are deliberately introduced into the environment for that purpose. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and sections 402, 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) give the Environmental Protection Agency (EPA) authority to regulate the distribution and use of pesticides in the United States. The Agency is responsible for ensuring that pesticides perform their intended functions without unreasonable adverse effects on public health and the environment. This is a task of enormous scope and complexity. An estimated 3.5 billion pounds of pesticide active ingredients are used annually in this country, representing about 1,500 different active ingredients and 40,000 products.

The Agency's 1990 pesticide regulation strategy includes the following elements: 1) registration of new products and control of pesticide residues in the food chain, 2) review and reregistration of existing products, 3) encouragement of correct uses of pesticides, 4) research and development to support and improve EPA's ability to evaluate the risks and benefits of pesticides, and 5) the enforcement of pesticide regulations. In 1990, the Agency will place major emphasis on building Regional/state capabilities in the emerging areas of protecting ground water, workers occupationally exposed to pesticides, and endangered species, by increasing the Regional and state roles in tailored management strategies and implementation oversight. Emphasis will also be placed on issuing Second Round Reviews (SRR's - formerly called Final Regulatory Standards and Tolerance Reassessments) for existing pesticides with complete data sets, and achieving closure on the reregistration of these pesticides by revising formulations and labels for the affected end-use products, as required. The Agency will also continue efforts on storage and disposal of cancelled and suspended pesticides.

Registration Activities

FIFRA and FFDCA authorize EPA to set the terms and conditions of pesticide registration, marketing, and use. Under the registration program, new pesticide products are registered on the basis of data reviewed by Agency scientists, and current registrations are amended to add new uses and/or new formulations. Manufacturers are required to conduct a full range of health and environmental testing before marketing their new products. This testing uses sophisticated methodology and techniques, enabling the Agency to more accurately determine the potential for ground-water contamination, residues on food or feed, worker and applicator exposure, environmental risks, and chronic and acute health hazards.

The registration program also includes special registration and tolerance-setting activities. The special registration part of the program will continue to perform an auxiliary function by permitting certain unregistered pesticide uses for experimental purposes and to deal with emergency pest situations. It also provides oversight and guidance to state registration and experimental use portion of dinoseb. In 1990, depending on the availability of permitted facilities and on the results of test burns, the Agency will make significant progress on disposal of 2,4,5-T/Silvex stocks and any remaining dinoseb stocks.

Pesticides Enforcement

The enforcement provisions of FIFRA are carried out primarily through the cooperative efforts of the states and territories, under a program of Federal-state cooperative enforcement agreements established with EPA. Participating states and territories conduct use inspections, inspect pesticide-producing establishments, maintain marketplace surveillance, and inspect dealers and users of restricted-use pesticides. In most instances in which violations are detected, the states and territories develop and prosecute enforcement cases as appropriate. In limited numbers of cases, states and territories may refer cases to EPA for action. The Agency encourages the states and territories to design and operate their enforcement programs so as to place greatest emphasis upon compliance with the use provisions of FIFRA, thereby producing the greatest environmental benefit. The Agency will continue to support and manage these cooperative efforts in 1990.

The Agency conducts Federal pesticides compliance monitoring programs in cases in which states or territories are unable or unwilling to support comprehensive compliance monitoring programs of their own. Federal programs in such instances include use investigations, import and export surveillance, and the preparation and prosecution of enforcement cases. Other activities that are exclusively the responsibility of the Agency include providing technical and compliance assistance to the states, the regulated community and the public, and operating an automated data system which maintains information on compliance inspections, enforcement actions and pesticide production. In 1990 the Agency's technical and compliance assistance efforts will also emphasize worker protection, ground-water protection, development of state enforcement response policies under FIFRA sections 26 and 27, and tracking and enforcement of compliance with pesticide registration requirements.

Research and Development

The Office of Research and Development (ORD) will continue to support the Office of Pesticide Programs (OPP) by performing research in the areas of test method development and validation; biomarkers, dosimetry and extrapolation; exposure monitoring; environmental engineering and technology; environmental fate and transport; ecology risk assessment; and biotechnology. In addition biotechnology research will be performed in the health, and environmental processes and effects area. This will include methods development for detecting, identifying and monitoring biological pesticide agents in mammalian cells and gene exchange potential.

Consulting Services

Consulting services are utilized by the Agency to support the Scientific Advisory Panel which, in accordance with section 25(d) of FIFRA, provides comments, evaluations and recommendations on actions and regulations proposed by the Agency.

PESTICIDES

	Actual 1988	Current Estimate 1989	Estimate 1990	Increase+ Decrease- 1990 vs. 1989
PROGRAM ACTIVITIES				
Incremental Outputs				
Special Review Decisions....	14	13	13	---
New Chemical and Biochemical/ Microbial Agent Reviews....	348	330	330	---
Old Chemical Reviews........	3,905	3,850	3,850	---
Amended Registration Reviews....................	10,380	4,560	4,560	---
New Use Reviews.............	457	300	300	---
Emergency Exemption Reviews....................	394	250	250	---
Experimental Use Permit Reviews....................	284	400	400	---
24(c) State Registration Reviews....................	892	475	475	---
Temporary Tolerance Petition Reviews...........	110	150	150	---
Tolerance Petition Reviews....................	456	475	475	---
Inert Ingredient Reviews....................	13	60	60	---
Producer Establishment Inspections a/.............	2,070	2,070	2,528	+458
Use/Reentry and Experimental Use Observations a/........	18,000	18,000	19,284	+1,284
Marketplace Investigations a/..........	4,610	4,000	4,000	---
Import Inspections a/.......	300	315	315	---

TOXIC SUBSTANCES

	ACTUAL 1988	ENACTED 1989	CURRENT ESTIMATE 1989	REQUEST 1990	INCREASE + DECREASE - 1990 VS 1989
	(DOLLARS IN THOUSANDS)				
APPROPRIATION					
Salaries & Expenses	$43,835.9	$45,101.4	$44,996.7	$47,567.3	$2,570.6
Abatement Control and Compliance	$79,031.8	$82,056.8	$81,236.0	$42,920.7	-$38,315.3
Research & Development	$15,351.8	$17,161.4	$16,986.4	$16,737.2	-$249.2
TOTAL, Toxic Substances	$138,219.5	$144,319.6	$143,219.1	$107,225.2	-$35,993.9
PERMANENT WORKYEARS	822.8	864.7	861.8	880.6	18.8
TOTAL WORKYEARS	863.1	875.0	871.6	880.6	9.0
OUTLAYS	$130,925.1	$143,954.6	$142,854.6	$113,155.2	$29,699.4
AUTHORIZATION LEVELS	Authorization for the Toxic Substances Control Act expired on September 30, 1983. Reauthorization is pending.				

NOTE: 1988 Actual does not include $105.0 discussed in OPTS Title III. It is included in the Superfund media total for 1988.

TOXIC SUBSTANCES

OVERVIEW AND STRATEGY

The Toxic Substances media covers programs implemented under four environmental statutes, all of which are focused on control of toxic chemical use. The Toxic Substances Control Act (TSCA) provides the authority and responsibility to protect human health and the environment from unreasonable risks arising from the manufacture, distribution, use or disposal of existing and new chemicals. The Asbestos School Hazard Abatement Act (ASHAA) directs the Environmental Protection Agency (EPA) to assist states and local educational agencies (LEAs) in determining the extent of risks from exposure to asbestos containing materials. The Asbestos Hazard Emergency Response Act (AHERA) imposes inspection and abatement requirements on all public and private elementary and secondary schools, and requires EPA to examine the issue of asbestos in public and commercial buildings. Finally, section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) requires EPA to establish an inventory of toxic chemical emissions from certain facilities as part of a broader emergency planning and community right-to-know program.

To carry out its mandates under the laws, EPA will implement the following major goals in 1990: 1) ensure new chemicals, including products of biotechnology, do not enter commerce without appropriate controls; 2) identify existing chemicals which pose unreasonable risks; 3) reduce risks from future marketing and use of existing chemicals; 4) remove especially toxic chemicals, such as asbestos and polychlorinated biphenyls (PCBs), from continued use; and 5) ensure strong enforcement and research and development support.

Ensure New Chemicals Do Not Enter Commerce Without Proper Controls

The New Chemical Review program reflects the preventive philosophy of TSCA by reviewing new chemicals for risks before they are manufactured or imported. The number of new chemical submissions received under section 5 of TSCA will reach an estimated 3,000 notices in 1990. New biotechnology product reviews, particularly those involving deliberate releases to the environment through field experiments, are expected to increase significantly. This increase reflects continued growth in the market for genetically engineered microorganisms and the expectation that many small scale research and development applications will reach full scale commercial development by 1990. EPA must review all submissions and impose appropriate controls or ban the manufacture or import of certain products in order to ensure protection of public health and the environment.

Identify Existing Chemicals Which Pose Unreasonable Risks

The Toxic Substances program carries out its review function on hundreds of thousands of existing chemicals in order to identify those which pose unreasonable risks by pursuing a multifaceted strategy:

- New data on chemicals are screened to identify hazards;
- Data in the possession of industry on manufacturing and use of chemicals are collected on chemicals of concern;

help them become more active in program operations for the Asbestos-in-Buildings and PCB programs. This effort will seek to build a coordinated Federal/state program in these two areas.

Ensure Strong Toxic Substances Enforcement

The major objective of the Agency's Toxic Substances Enforcement program is to maintain an efficient and effective national compliance monitoring program with appropriate coverage of all enforceable TSCA regulations. The enforcement program depends increasingly upon the assistance of state agencies which conduct compliance monitoring inspections under the terms of cooperative enforcement agreements. Twenty-two states currently participate in the TSCA cooperative agreement program and this number is expected to increase by seven to ten states in 1990. State programs emphasize compliance monitoring of existing chemical control rules, particularly those for asbestos and PCBs. Since the states cannot initiate TSCA enforcement actions without meeting certain strict criteria of equivalency provided for in the law, the Agency is responsible for case development and prosecution for all detected violations, whether originating from state- or EPA-conducted inspections.

Of concern to both EPA and the public is controlling hazards from asbestos and assuring the proper storage and disposal of PCBs. The enforcement program is placing a growing emphasis on conducting a comprehensive compliance program in these areas, including more frequent and comprehensive inspections at PCB disposal sites, and will be targeting inspections at brokers, storers and transporters of such materials.

The Toxic Substances Enforcement program also supports the enforcement provisions of SARA Title III. Prior to the time that these provisions became fully enforceable, the Agency provided compliance assistance to the regulated community, the states, and local authorities. With all sections of Title III now fully enforceable, EPA has begun an inspection program to ensure that manufacturers, processors, and users of subject chemicals comply with section 313 requirements to submit reports of the annual emissions and discharges of toxic chemicals.

Ensure Strong Research and Development Support

The Office of Research and Development (ORD) will continue to support the Office of Toxic Substances (OTS) by performing research in the areas of test method development and validation; biomarkers, dosimetry and extrapolation; exposure monitoring; environmental engineering and technology; special human data needs; structure activity relationships (SARs); environmental fate and transport; ecology risk assessment; and biotechnology. In addition, research efforts will focus on development and evaluation of asbestos abatement, control and monitoring technologies, emission and monitoring methods for SARA Title III chemicals, and increased health and environmental effects and engineering work in biotechnology.

Consulting Services

Consulting services are used on an intermittent basis to supplement technical expertise needed in the asbestos program.

TOXIC SUBSTANCES

	Actual 1988	Current Estimate 1989	Estimate 1990	Increase+ Decrease- 1990 vs. 1989
PROGRAM ACTIVITIES				
Incremental Outputs				
Existing Chemical Review				
Section 8(e), FYI's Received	417	400	400	--
Section 8 Reports	601	1,050	1,320	+270
Section 8 and 5(a) Rules.....	14	9	11	+2
Preliminary Risk Assessments	15	10	20	+10
Detailed Risk Assessments....	2	2	6	+4
List 2 Inerts Screened.......	15	35	50	+15
PCB Disposal Permits.........	12	12	12	--
Option Selections............	2	3	4	+1
Rulemakings..................	4	4	1	-3
Section 9 Referrals..........	0	1	1	--
PCB Exemptions	12	10	10	--
Asbestos Ban Exemptions......	--	15	15	--
New Chemical Review				
Rulemakings..................	1	3	0	-3
New Chemical Submissions.....	3,039	2,800	3,000	+200
New Chemical Control Actions	180	140	140	--
Biotechnology Notices........	13	65	155	+90
Biotechnology Control Actions ..	3	15	30	+15
New Chemical SNURS...........	--	185	185	--
Receipt of Test Data.........	50	30	30	--
Bona Fide Submissions........	387	500	600	+100
Commencement Notices.........	1,239	1,200	1,200	--
Chemical Testing				
ITC Testing Actions..........	14	20	20	--
Non-ITC Testing Actions......	1	2	3	+1
Test Guidelines..............	1	2	2	--
Test Standard Modifications..	30	60	75	+15
Interim Test Program Reviews	3	7	12	+5
Final Test Program Reviews	4	12	17	+5

REID

QUESTIONS FOR LINDA J. FISHER
TOXIC SUBSTANCES CONTROL ACT (TSCA)
JULY 27, 1989

1. This Committee has jurisdiction over the Toxic Substances Control act, and I'd like to ask a few questions about your plans relating to TSCA:

Part A. Recently the Interagency Testing Committee recommended no additional chemicals for testing - does this indicate that EPA has adequate information about the possible effects of the 60,000 chemicals in use today?

Answer

No. The number of chemicals the ITC recommends for testing fluctuates in each report although it tends to be around five chemicals per report. The ITC screens chemicals in batches. A batch may be on the order of 100 or so chemicals. The ITC then proceeds to collect information on each chemical's exposure and toxicity. Many chemicals do not survive this winnowing process to the final stage of being recommended for testing because there is minimal exposure, the chemical is not in commercial production or because data are found to be sufficient to address the ITC's concerns. When the last few chemicals in a given batch do not appear to be priority testing candidates, as has happened in a couple of instances, the ITC submits its semi-annual report to EPA without making any additions to the Priority List.

Part B. If we do not have enough information about all of these chemicals, and EPA has a central role in the ITC, how do you feel we can get more information generated about chemicals in order to help implement TSCA and the other statutes under EPA jurisdiction?

Answer

EPA, of course, is but one of eight member agencies on the ITC and as such has only one vote. Thus, while the EPA has considerable influence on the ITC, the ITC acts as it should as an independent body. The ITC uses a traditional chemical-by-chemical approach for screening and nominating chemicals. We believe that this approach needs to be complemented by a testing program which will obtain basic screening information on a large number of chemicals. We are incorporating this kind of testing in our program plans for FY90 and 91. The Toxic Release Inventory (section 313 of SARA) data will provide a basis for issuing multi-chemical rules to obtain screening level data on chemicals released into the environment in substantial quantities that lack such data.

There are other sources of testing candidates that will feed into the section 4 testing program including the toxicological profile chemicals for which data gaps are being identified under SARA 110. We have also solicited and are performing testing to support the regulatory efforts of other EPA program offices such as the Office of Solid Waste and the Office of Drinking Water.

In short, the ITC is a valuable source of advice regarding which chemicals should be tested, but their advice needs to be supplemented from a number of sources in order to ensure a comprehensive testing program under TSCA.

REID

Q. Over the past eight years the EPA has repeatedly cited Section 9 of TSCA, which was intended to avoid duplication of efforts among federal programs and agencies, to avoid any effort at controlling certain hazardous substances.

How do you intend to interpret Section 9 - will you continue the practice of identifying problem chemicals under TSCA but then defer any regulatory action if it is in the potential agenda of another agency, or will you take action under TSCA if the other agency seems unwilling or unable to control the problem?

Answer

First of all, I am unaware of any instance in which TSCA §9 has been cited to avoid controlling a hazardous substance.

Secondly, one must understand that §9 is designed "to avoid duplication of efforts among federal programs" by giving primary jurisdiction to the other agency.

I will vigorously use TSCA §6 to control those hazardous substances that fall within its jurisdiction. I also intend to aggressively apply §6, in conjunction with §9, to control -- or where necessary to encourage others to control -- exposures to hazardous substances over which there is overlapping jurisdiction.

It is important to understand, however, that the restrictions imposed by §9 on use of §6, in cases of overlapping jurisdiction, are not a matter of "interpretation" but are, in fact, quite real. In those instances in which the Administrator finds that another agency's authority may be applicable and sufficient, EPA is required to refer the problem to that agency before taking any action under §6. Once referred, EPA may not act under §6 unless (1) the other agency agrees with EPA's assessment of the risk, and (2) fails, for one reason or another, to act under its own authority within 90 days.

I do believe there is ample room to impose more discipline upon our §9 referral procedures in order to ensure, insofar as possible, that the chemical problem is controlled by one agency or the other. Among other things we must not refer any problem to another agency under §9 unless we are ready to act under §6 if the other agency's actions, or lack of action, enable us to proceed. In addition, I intend to monitor these referrals very closely to ensure that approriate action is taken on these chemicals as soon as possible.

REID

Q: EPA reviews approximately 1,000 new chemical a year and has been doing so for almost ten years. In all of that time, have you ever required extensive testing for possible chronic health effects of any of these new chemicals?

Answer

Yes. EPA has required chemical manufacturers to perform chronic health testing on many of the chemical substances for which premanufacture notices (PMNs) have been submitted. Between 10 and 13 percent of the 2,000-plus PMN substances the Agency reviews annually are regulated in some manner. Such regulation typically takes one of two forms: either a section 5(e) ban pending the development of toxicity data, or section 5(e) regulation (e.g., worker protective equipment requirements) pending the development of toxicity data under section 5(e). The chronic health effects for which testing has been ordered include developmental effects, systemic effects, neurotoxicity, mutagenicity, and carcinogenicity. Although many manufacturers have withdrawn their PMNs rather than conduct the testing required by EPA, PMN submitters for more than 80 PMNs have signed section 5(e) consent orders which require development and submission of toxicity data at specified production volumes. Moreover, several dozen other submitters have agreed to suspensions of the 90-day PMN review period in order to develop health and environmental toxicity testing required by the Agency.

[Note: Due to their high cost, cancer bioassays have been required in only a few of the 5(e) consent orders referred to above. However, many of the proposed 5(e) actions taken by the Agency have required cancer bioassays. (In all such cases to date, manufacturers have withdrawn their PMNs to avoid the stigmas associated with 5(e) actions.) It should be noted, also, that many of the 5(e) consent orders the Agency has entered into to date, especially the older ones, did not require the submission of data at a specified production volume, although protective equipment and other exposure controls are required.]

REID

Q. Section 4(f) of TSCA is intended to prod a quick response to EPA's discovery of new information about the hazards of a chemical.

Can you tell us the status of the 4(f) chemicals--when you first learned of their hazard and EPA's regulatory response?

Answer

EPA has applied TSCA section 4(f) to four chemicals:

Methylene chloride--EPA first learned of methylene chloride's carcinogenic potential in early 1985 when positive results of a National Toxicology Program (NTP) bioassay became available. In September, 1985, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) on this chemical. In 1986, EPA's regulatory investigation of methylene chloride was expanded to include five other chlorinated solvents: perchloroethylene, trichloroethylene, carbon tetrachloride, CFC-113, and 1,1,1-trichloroethane. These chemicals are important solvents that have similar commercial uses, such as in metal cleaning, paint stripping, and aerosol products. The investigation, which is being coordinated by EPA with the participation of other Federal agencies, including OSHA, CPSC and FDA, is on-going, although portions have been completed. Actions taken to date include a CPSC labeling program for all consumer products that contain methylene chloride, a FDA ban on personal care products containing methylene chloride, an OPP data-call-in project that resulted in all companies reformulating methylene chloride out of the pesticide products and OSHA drafting a new workplace standard that is scheduled for proposal this year.

4,4-methylenediamine (4,4-MDA)--EPA first learned of the carcinogenic potential of 4,4-MDA in early 1983 when positive results of NTP bioassays on rats and mice became available. In April, 1983, EPA published its 4(f) determination for this chemical and issued a joint ANPR with OSHA in September, 1983. After conducting a regulatory investigation, EPA concluded that the manufacture and current use posed unreasonable risks and issued a TSCA section 9(a) report to OSHA in July, 1985. In October, 1985, OSHA announced the formation of an negotiated rulemaking panel to assist OSHA in MDA rulemaking activities. In May, 1989, OSHA proposed a workplace standard for the chemical.

1,3-butadiene--EPA learned of the carcinogenic potential of 1,3-butadiene from positive results of a 1981 bioassay on rats and the preliminary results of a 1984 NTP bioassay on mice. EPA announced its 4(f) determination for this chemical in January, 1984. In May, 1984, EPA issued an ANPR on this chemical. After conducting a regulatory investigation, EPA concluded that the manufacture of the chemical and its processing into polymers posed unreasonable risks and issued a TSCA section 9(a) report to OSHA in October, 1985. In October, 1986, OSHA issued an ANPR for this chemical.

Formaldehyde--See below

I'm especially interested in the case of formaldehyde--when was the first evidence of cancer risk discovered?

Answer

EPA first received significant information bearing on formaldehyde's carcinogenicity in October 1979 when Chemical Industry Institute of Toxicology (CIIT) announced the interim results of a rat inhalation bioassay. After CIIT released the preliminary results of its full study in November, 1980, EPA began consideration of the applicability of TSCA section 4(f) to this chemical. Following a decision process that subsequently generated considerable public controversy, then-Assistant Administrator John Todhunter recommended in February, 1982, to Administrator Gorsuch that TSCA section 4(f) should not apply to the chemical.

In November, 1983, EPA announced that it was rescinding that earlier decision. In May, 1984, EPA issued a notice stating that TSCA section 4(f) did apply to large populations deemed to be at significant risk because they are exposed for long periods of time to elevated levels of formaldehyde. These groups included: (1) garmentworkers who are exposed by off-gassing of fabrics treated with durable-press resins, and (2) residents of homes that contain significant amounts of urea-formaldehyde (UF) pressed wood building materials and cabinets. At the time EPA issued its 4(f) notice, EPA also issued an ANPR and began a regulatory investigation under TSCA.

In April, 1986, EPA terminated its investigation of garmentworker exposure after OSHA announced plans to revise its workplace standard for the chemical. In December, 1987, OSHA published a final rule that regulates formaldehyde as a workplace carcinogen and lowers the permissible occupational exposure standard.

When did EPA curtail use of the chemical?

Answer

EPA's regulatory investigation of UF pressed wood is nearing completion. In April, 1987, EPA issued a risk assessment document addressing formaldehyde exposure to garmentworkers and residents of homes containing significant amounts of UF pressed wood. The assessment presented the scientific basis for EPA classifying formaldehyde as a "probable human carcinogen" and contained estimates of the cancer risks to which these two populations are exposed. Risk management decisionmaking by EPA on curtailing indoor formaldehyde emissions from UF pressed wood (including particleboard, hardwood plywood and fiberboard used as residential building materials and in cabinet and furniture construction) is currently in progress.

While EPA has been pursuing its investigation, actions by other Agencies have addressed aspects of the formaldehyde-pressed wood issue. In 1985, the Department of Housing and Urban Development (HUD) issued final rules that set emission standards for most UF pressed wood used in manufactured (mobile) home construction. These standards were designed primarily to protect against the adverse acute health effects of formaldehyde that were experienced by residents of new mobile homes in the late 1970s and early 1980s when efforts to increase their energy efficiency created less well-ventilated homes. In 1986, the Consumer Product Safety Commission (CPSC) decided to encourage the development of voluntary, national consensus standards for UF pressed wood products, in response to a 1982 petition by the Consumer Federation of America calling for regulation of the products. Recently, the ANSI standard for particleboard has been revised to include formaldehyde emissions provisions that are similar to the 1985 HUD emission standards.

REID

Q: As you know, TSCA's overall implementation has been disappointing to many people - inside and out of EPA. Does TSCA require the same attention as FIFRA/ Do you plan to send to this Committee recommendations for improving TSCA?

Answer

As Assistant Administrator for Pesticides and Toxic Substances, I am charged with the responsibility of fully implementing the Toxic Substances Control Act, as well as the Federal Insecticide, Fungicide, and Rodenticide Act, and other statutes. I consider TSCA one of the most important statutes administered by this Agency as it provides us the unique tools to regulate pollution from a cross-media perspective.

Although I consider the staff in the Office of Toxic Substances to be among the most talented in the Agency, I am aware of criticism of the program. I intend to review the program from both an administrative and a statutory point of view to see where improvements can be made. Dr. Terry Davies, Assistant Administrator Designate for the Office of Policy, Planning, and Evaluation, was one of the orginal drafters of TSCA. He and I have already begun discussions to identify improvements to the program and the statue to make it more effective. I will share with the Committee any and all of our recommendations for change.

REID

Q. **What are EPA's plans regarding the health hazards posed by asbestos and the development of national standards for accreditation and training of abatement personnel?**

Answer

To date, we have considered the development of accreditation and training of asbestos abatement personnel one of our top priorities. We know that asbestos abatement personnel, if not properly trained and protected, may not only experience unnecessary exposure themselves, but can also, through their mistakes, elevate levels for all building occupants. Clearly, accreditation and training will continue to receive special EPA attention, particularly over the next couple years as we help build the infrastructure of State accreditation programs envisioned by the Asbestos Hazard Emergency Response Act (AHERA).

EPA's Model Accreditation Plan for States, issued in April 1987 pursuant to AHERA, set forth national standards for the training, examination and continuing education of those who conduct asbestos inspections, develop school management plans and design and conduct abatement activities in schools. It was developed through a regulatory negotiation with school officials, contractor and worker groups, as well as representatives from leading professional associations and States.

Even before 1987, however, EPA had provided approximately $2.5 million to about 40 States to stimulate the development of asbestos abatement contractor and worker training and certification programs. By early 1988, nearly 40 States had established some type of certification program, which States are now upgrading to meet the new EPA model plan standards.

Since issuing the model plan in 1987, EPA has:

- Approved 15 State AHERA accreditation programs, including 12 for asbestos abatement supervisors and workers, and six for all five required disciplines (inspectors, management planners and abatement project designers, as well as supervisors and workers). Many other States are in the process of establishing these programs, required by AHERA.

- Approved 438 training providers to offer 1,160 individual asbestos accreditation training courses and more than 500 laboratories to conduct asbestos analysis. EPA estimates that these course providers have already trained more than 100,000 asbestos abatement personnel, now at work in the nation's buildings. EPA will list even more courses on August

31, when it produces its eighth quarterly listing of approved State programs and course providers in the Federal Register.

Late this summer, EPA plans to increase its concentration on course quality by accelerating the audits of contingently approved courses rather than issuing any new course approvals, which can be accomplished through existing and emerging State programs.

- Issued an additional $1 million in 1988 to 17 States to help establish AHERA accreditation programs.
- Developed model accreditation courses for inspectors, management planners and asbestos abatement supervisors, available to training providers at cost.
- Selected five labor-management training trust funds to receive $400,000 in training assistance, as well as providing a $100,000 grant to the National Association of Minority Contractors (NAMC), for supervisor and worker training later this year and in early 1990.
- Engaged the National Conference of State Legislatures (NCSL) to develop model accreditation legislation for States and a fee-based system to help offset program administration expenses. NCSL also tracks State program development and offers technical counsel to States.
- Funded the National Asbestos Council (NAC), the nation's largest interdisciplinary association of asbestos professionals, to develop a National Database of AHERA Accreditation, which provides lists of AHERA-accredited personnel to school officials and other building owners at a modest fee.

This year, we have launched a new major initiative to enhance State asbestos activities. Presently, our Regional offices are developing strategies for providing both technical and financial assistance to States to establish asbestos accreditation programs, as mandated by AHERA, as well as to stimulate the development of other asbestos management and enforcement programs. We will encourage States to develop programs which involve all public and commercial buildings, not just schools. The President's 1990 budget includes $2 million in grants to states to support this important effort.

Finally, we are working with NAC to upgrade national accreditation standards, through a new State program reciprocity effort and we will develop model accreditation courses for asbestos abatement workers and project designers.

RESPONSES TO QUESTIONS FROM SENATOR LIEBERMAN

Question 1

In the June 27, 1989, draft of EPA's proposed FIFRA amendments, suspension was defined as occurring when the pesticide "is likely to cause significant risk", in the July 21 draft EPA had returned to the current language calling for a suspension when a pesticide is "an imminent hazard." Why did this change occur? Will EPA continue the restrictive interpretation of imminent hazard it has previously applied under the FIFRA? Or will it consider the broader interpretation of imminent hazard language which it has urged on the courts under RCRA, Superfund, and the Safe Drinking Water Act?

Answer 1

In regard to the draft FIFRA language, the short answer is that EPA is trying to solve two basic problems with the current "imminent hazard" language (discussed below); the June 27 approach was to eliminate the term and try new language, and the July 21 approach is to re-define "imminent hazard" to accomplish the changes we are seeking.

(1) The primary problem with the current statutory standard for suspending a pesticide's use is that the statute uses a term, "imminent hazard," whose definition requires EPA to assess the economic impact, as well as the health risks posed by a pesticide, before taking a suspension action. This is because FIFRA section 2(l) defines "imminent hazard" by incorporating the term "unreasonable adverse effects", which in turn is defined in section 2(bb) to include consideration of the "economic, social and environmental costs and benefits of the use of any pesticide."

In practice, EPA has had one emergency suspension action involving dinoseb reversed in court for failure to adequately assess economic impacts to a small group of affected users of the pesticide. Thus, the Agency's intention in its draft proposals has been to eliminate the consideration of economic benefits from suspension actions based on persuasive evidence of risk. The June 27 draft did this by eliminating the "imminent hazard" language, and the current approach is to redefine the term so that certain other health considerations can be taken into account, but not purely economic effects. (For "interim withdrawal", where there is less clear evidence of risk, EPA does propose to consider economic factors.)

(2) The term "imminent hazard" also implies an immediate, short-term risk; thus, in considering a suspension action, the Agency estimates risks only for the approximately two-year period needed for completing a cancellation action. However, such a

specific, time-limited focus makes it more difficult for chronic risks, such as cancer, if the evidence for that chronic risk is persuasive.

Thus, part of the reason for using different language in the June 27 draft was to de-emphasize the time period of exposure, and focus instead on the weight of evidence, i.e., that the adverse effect is considered "likely" to occur. EPA intended that to be a high standard of scientific evidence for the risk, to be invoked for short-term emergency situations or very persuasive cases involving serious chronic risk.

However, discussions with other agencies showed that the June 27 terminology was not clearly perceived to be a high threshold for risk evidence, and virtually all commenters preferred the term "imminent hazard" as a better way to capture the idea of a high degree of risk warranting prompt action. Thus, the July 21 draft approach is to resume the use of "imminent hazard", but to offer a new statutory definition of the term. We have redefined the term to (1) remove the consideration of economic benefits and (2) remove the time considerations in making future decisions on immediately effective suspensions. (The concept of evaluating the level of risk during the period needed for cancellation procedures is contained in the provisions for "interim withdrawal", to be used when there is less persuasive evidence of risk to the public.)

Some other environmental statutes, such as RCRA, Superfund and the Safe Drinking Water Act include the terms "imminent and substantial endangerment", which are not defined. EPA supports broad interpretation of "imminent and substantial endangerment" under these statutes because they are designed primarily to trigger remedial actions on detected incidents of environmental pollution. In contrast, FIFRA is a product licensing statute which specifically requires risk/benefit balancing. Both the risks and the benefits involved in any particular case are often in doubt, and require careful assessment to clarify. Thus, EPA feels that it is appropriate to carefully define the thresholds for different levels of action, including a fairly high standard of risk evidence for the most stringent action, immediate suspension of the use of products in the marketplace.

Question 2

How will the proposed sunset provision in EPA's FIFRA proposal be applied; will the burden be on the registrant to come back after nine years and prove that the pesticide is still safe or will the burden of proof be on EPA to show that the pesticide is dangerous?

Why doesn't EPA simply enforce the existing 5 year sunset provision which is already in the statute?

Answer 2

The purpose of EPA's sunset proposal is to require registrants to demonstrate periodically that their pesticide products meet the then-current standards for registration. Therefore it will be the registrants' burden to demonstrate every nine years that there is a complete, scientifically valid data base to support their products and that those data show that the products could be registered under FIFRA sec. 3(c)(5) or 3(c)(7)(C) if the product were being presented to EPA for the first time. A registrant's request for renewal would also need to meet all applicable requirements concerning the labeling, packaging, and composition of the product. Unless the registrant could show that its product was safe and satisfied all other applicable requirements, the registration would not be renewed at the end of the nine year sunset period. EPA would not have the burden of showing that the product was dangerous. (Of course, if EPA had data showing that use of the pesticide resulted in unreasonable adverse effects on the environment, the Agency could, at any time, remove the product from the marketplace by cancelling its registration.)

The Agency has chosen, at this time, not to try to implement a sunset procedure using the five year cancellation authority in FIFRA sec. 6(a)(1). That section provides in part that:

> The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, or other interested person with the concurrence of the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect. . . .

There are three reasons why the Agency has chosen not to try to use this authority to implement a sunset review of products. First, there is some uncertainty about the scope of EPA's legal authority under this provision which was enacted many years before the 1972 amendments to FIFRA which required, among other things, the reexamination and reregistration of all then-registered pesticides. The legislative history explaining the five-year cancellation provision gives little indication of whether the authority was intended merely as a way of performing "housecleaning" of registrations when the registrant failed to submit a perfunctory request that the registration be continued or the authority could be used in a more substantive manner. During the years prior to 1972 when this authority was exercised, registrants were not required to meet major substantive standards for their registrations to be continued in effect. Thus, there is some question whether EPA could apply this authority to remove a pesticide from the marketplace if the registrant had filed a timely request for continuation, but had not met more substantive requirements.

In addition to questions about the scope of EPA's legal authority, it is clear from the statute that this authority could only be applied in accordance with regulations. Since rulemaking is a resource-intensive and lengthy process, EPA has chosen not to invest the effort in issuing rules under this section that would certainly be challenged, might not be upheld, and, if upheld, could be applied only after many years.

Finally, administration of the five-year cancellation provision would present more practical difficulties than the EPA sunset proposal. The EPA proposal would require review of all products containing the same active ingredient at the same time, just as the reregistration provisions of the 1988 amendments do. In contrast, the five-year cancellation provision bases the review cycle on the date of each individual product registration. Since new "me-too" products may be registered at any time, the five-year cancellation provision could lead to review of different products containing the same active ingredient every year, an extremely inefficient and resource intensive process.

Question 3

If the FIFRA amendments that EPA is requesting are enacted, how long would it take from the date of the first good evidence of carcinogenicity to the reassessment of the tolerance, suspension, or cancellation?

Answer 3

When necessary, it takes EPA scientists approximately four months to complete the review of a long term chronic study and to subject the review to an internal EPA peer review committee for confirmation of the review conclusions. It then takes approximately five months to consider the appropriate regulatory action and prepare the resulting documents, such as a cancellation and/or tolerance revocation notice proposing an Agency position. It then takes another 10 months to receive and analyze public comments, obtain comment from SAP and USDA, and prepare and issue the documentation to finalize the decision. Based on this experience, a cancellation/tolerance decision could at a minimum be effected in 19 months from when the Agency first receives the evidence of carcinogenicity. We anticipate, however, that elimination of formal adjudicatory hearings as part of the cancellation process may lead to more extensive public comment and discussion during the notice-and-comment procedure described in EPA's draft legislative proposal. Thus, we think that the process is more likely to last closer to two years.

For a suspension action, only one round of regulatory decision-making and document preparation would occur, and that process would be more accelerated than the schedule outlined above. A suspension could probably be issued in four to six months from when the data are received by the Agency.

In both cases, the schedule assumes that the available data base is adequate to support a regulatory decision, and therefore that the decision would not be delayed pending submission of additional data. It also assumes no major increase in the workload.

Question 4

In EPA's June 23 draft amendments to FFDCA, negligible risk is defined as "the range of one in one hundred thousand to one in a million or less", while in the July 18 draft no number is used to define negligible risk. Why was this change made? Does this mean the Agency does not consider one in one hundred thousand as the limit on negligible risk? Could a one in ten thousand risk be classified as a negligible risk under the proposed amendments? Given that a one in ten thousand risk means approximately 26,000 additional cases of cancer and if children consume much larger quantities their risk could be in the hundreds of thousands, does this seem like a negligible risk?

Answer 4

Using the risk assessment techniques currently accepted by the scientific community, EPA would consider an increased lifetime upper-bound risk of cancer from dietary exposure to be negligible if it fell in the range of one in a hundred thousand or less. I certainly would not consider a dietary risk from a potential human carcinogen that was as great as one in ten thousand to be negligible.

The EPA's July 18, 1989, draft legislative proposal does not contain a numerical definition of negligible risk because both EPA and other federal agencies agree that, if such a standard became law, it could inappropriately interfere with future decision-makers' ability to take into account evolving scientific understanding of human carcinogenesis. Although generally accepted today, new scientific insights may well teach us that an increased lifetime risk higher (or lower) than one in a hundred thousand is negligible, or even that today's risk assessment methodologies are inappropriate for characterizing carcinogenic risk. Therefore, I fear that putting a numerical definition of negligible risk in law could, some years from now, be considered to be as anachronistic as the Delaney clause is now seen.

Finally, I wish to correct two mistaken assumptions about risk assessment that appear in this question. First, EPA's risk assessment is an estimate based on an upper-bound of the potency and average lifetime exposure. Stated another way, the risk estimate is a type of "worst-case" estimate; the actual risk is very likely to be much lower and may even be non-existent, i.e. zero. Thus, when converting an average lifetime risk into a population risk, the number generated is not an estimate of actual cancer cases. For example, if the dietary risk of a pesticide is 1×10^{-6} and the population exposed is 230 million, the projected number of cancer cases is no more than 230 over a seventy year period and would likely be fewer, possibly none.

Second, unless otherwise stated, EPA's risk assessment estimates the impact of exposure for a full seventy year lifespan, and represents the greatest risk that people--whether they are now infants, children, teenagers, or adults--could be expected to experience. As explained in more detail in the answer to question 16, in developing an estimate of lifetime risk EPA takes into account the fact that children eat more food per unit of body weight, and more of certain types of food, than do adults. This does mean that children probably have a greater exposure than do adults, but the risk experienced during childhood is always less than the total risk experienced over the course of a lifetime. It is this latter risk--the risk of a lifetime of exposure--that EPA uses in making its decisions whether to cancel a pesticide.

Question 5

In testimony on the Kennedy/Waxman bill Dr. Jack Moore indicated that he could not see a level of benefits which would outweigh an actual one in one hundred thousand risk? Can you?

Answer 5

Generally an upper-bound lifetime dietary risk estimate of 1 in 100,000 (10^{-5}) approaches a level which I would not expect the benefits of use to outweigh the risk of that magnitude. However, in weighing risk and benefits, the Agency must take into account not only the size of the risk, but also the strength of the data on human carcinogenicity (the weight of the evidence) and the reliability of the data on which the exposure estimate is based. One cannot rule out the possibility that in very unusual cases, while the carcinogenic risk may be high, the risk may be warranted by extremely high benefits. I can think of a couple of examples where this could happen:

(1) where the cancellation of the use in question would result in an even greater risk, such as the failure to control a pest which adversely affects public health or

(2) where the use of an alternative method of pest control would pose another risk, perhaps of a different type but even more significant than the first.

Having stated the general principle above, I want to point out that in the history of EPA's regulatory actions on pesticide registrations, the Agency has never knowingly registered or made a final decision to maintain the registration of a pesticide use when it had reliable data showing an actual carcinogenic risk greater than one in one hundred thousand.

Question 6

If there is evidence of some increased risk of cancer from a pesticide, but EPA decides not to cancel it, would you support placing warning labels on food which has been treated to indicate to consumers that there is an increased risk from this food product?

Answer 6

I generally support the idea of providing consumers with the information they need to make informed choices about their food and other purchases. A regulatory program requiring labels on all food products, however, would present many significant problems that would need to be reworked before I could support such a proposal.

Any food labeling scheme would face problems in selecting effects, in defining which levels trigger a label requirement, in actually attaching labels to many kinds of food, and in choosing the wording for such labels. One issue which deserves attention is the breadth of health effects that would be of concern. Would a program cover only carcinogenic substances, or would other effects be included? What amount of data would be sufficient to conclude that a pesticide causes cancer or another effect? EPA's guidelines for evaluating the qualitative strength of a body of data on carcinogenicity show that the answer is neither clear cut nor easy. A closely related issue is what level of a carcinogenic pesticide in food should trigger a labeling requirement. If EPA chose not to cancel a carcinogen on a food, the risks would, almost by definition, be either de minimis or very low. If the threshold for a label were such that any amount of any suspect carcinogen would require a label, we may end up labeling virtually everything and defeat the purpose.

Additionally, the processing and handling of agricultural commodities between the field and the supermarket could pose some major practical problems in simply labeling the food. First, how much of the food is to be labeled--every apple, every bunch of grapes? Second, in handling commodities, produce from many farmers is often mixed; for example, in making juice or tomato sauce how would the identity of treated and untreated produce be maintained? Third, in handling and processing of agricultural commodities items are washed and handled mechanically, making it difficult to keep labels on the produce; how could those problems be overcome?

The problem of what a warning would say is even more complex because most consumers simply do not understand risk assessment and its uncertainties. As I said earlier, helping consumers make informed choices should be the goal of any labeling program but I am not convinced that we know the most effective way to do that.

Should a label simply state that the food contains a substance shown to cause cancer in lab animals or should it convey some sense of the magnitude of the increased risk and the uncertainty in the estimate? Clearly, the amount of information and the degree to which consumers may understand and use such information is very different under these two approaches.

Some private sector initiatives aimed at providing information on the presence or absence of pesticides on fresh fruits and vegetables are being successfully conducted by retail outlets in various parts of the country. In addition, "organically grown" labels and certification programs seem to be increasing and finding acceptance among consumers. I believe the appropriate Federal role at this point is monitor the evolution of these private sector initiatives.

Question 7

According to the National Academy of Sciences, if EPA cancelled the 10 worst, most dangerous, pesticides we could get rid of 80% of the risk from pesticide exposure. Will you put these pesticides on a priority review track? When can we expect that EPA will act on these 10 chemicals?

Answer 7

The National Academy of Sciences (NAS) Committee based many of its conclusions as to distribution of dietary oncogenic risk on an analysis of 28 chemicals identified by EPA as oncogens (a substance which causes tumors in laboratory animals). One of their conclusions was that approximately 80 percent of dietary oncogenic risk from the 28 pesticides that comprise the Committee's risk estimate is attributable to residues of approximately 10 compounds in 15 foods. However, the report emphasized that these estimates of risk, which were made as a rough index of priorities, are based on working assumptions that may greatly over-state the risk attributable to these pesticides and should not be interpreted to represent actual consumer risks. Furthermore, the Committee included no consideration of weight of the scientific evidence on carcinogenicity (although they indicated that EPA ought to). EPA and the NAS Committee are in agreement on these points; EPA also uses these same assumptions in some of its preliminary assessments. One such assumption is that 100% of crops that may legally be treated with a pesticide are treated with that pesticide. A second assumption is that residues are always present in the food at tolerance (maximum permissible) level at the time of consumption.

While we agree that such assumptions are useful for rough approximations to prioritize Agency actions, we do not believe that 80% of consumer risk can be eliminated by cancelling these pesticides. The Agency has, however, made these chemicals a high priority for review. Under the 1988 Amendments to FIFRA, EPA is required to issue lists of pesticides in order of priority for reregistration review. All of these pesticides appear on List A, with the exception of permethrin, which is on List B. One factor considered in determining the Agency's priorities is the position of a chemical on the NAS list.

Finally, let me point out that the Agency has already devoted a considerable amount of review to the particular pesticides identified by the NAS as posing the greatest risks. Attached is a status report for each of the twelve top ranked pesticides (including four which are grouped as EBDCs) on the NAS list.

PESTICIDES CITED BY NAS AS ACCOUNTING FOR MAJORITY OF THEORETICAL RISK

HERBICIDES

1. **Linuron:**

- Initially registered - 1966
- Registration Standard issued - June 1984
- Special Review begun - September 1984
  - dietary and applicator exposure, based on oncogenicity concerns
- Proposed decision to conclude the Special Review issued 8/87 with the determination that the evidence for human oncogenicity was too weak.
- The Determination to Conclude the Special Review (PD 2) was signed 1/89.

INSECTICIDES

2. **Chlordimeform:**

- Initially registered - 1968
- Only remaining use - cotton; in 1976, registrants voluntarily withdraw all uses and reintroduced the product in 1978 with only cotton on the label.
- Registration Standard issued in January 1986
  - Standard identified oncogenicity concerns triggering Special Review criteria for oncogenicity, particularly for mixers/loaders/applicators.
- Registrants requested 2/88 voluntary cancellation of remaining cotton use, effective 2/89.
- Proposed decision not to initiate Special Review due to voluntary cancellation issued 8/88.

- Final decision not to initiate Special Review due to voluntary cancellation issued 1/89; allowed use of existing stocks through 1989 growing season.

3. Permethrin:

   - Initially registered - 1979 for cotton; 1982 for other agricultural uses (some § 18 exemptions 1977-82)
   - In 1982, Agency concluded, based on weight of evidence, that likelihood of oncogenic potential in humans from low-level exposure is non-existent or extremely low.
   - In April 1989, EPA re-evaluated the weight of evidence for oncogenicity and classified permethrin as a "C" oncogen requiring a quantitative risk assessment. In May 1989 the FIFRA SAP evaluated EPA's decision and concluded that permethrin is a class C oncogen not requiring quantitative risk assessment. A final EPA decision is pending.

FUNGICIDES

4. Captafol:

   - Initially registered - 1954
   - Registration Standard - October 1984
   - Special Review begun - 12/84
     - Trigger - oncogenicity and wildlife effects
   - Voluntary cancellation requested by all registrants - March 1987; effective May 15, 1987
     - Use of existing stocks permitted until May 15, 1988
   - Special Review proposed to be terminated due to voluntary cancellation in July 1987; final decision to conclude Special Review (PD 2) issued 8/88.

5. Benomyl:

   - Initially registered - 1967
   - Special Review begun - December 1977
     - Triggers - mutagenicity, teratogenicity, reproductive effects, and wildlife effects

- Special Review concluded - 1982
  - Required protective equipment for applicators
- Registration Standard issued July 1987 indicating no need to initiate Special Review.

6. **Captan**:

- Initially registered - 1951
- Special Review begun - August 1980
  - Triggers - oncogenicity, mutagenicity, and other chronic effects
- Registration Standard issued - March 1986
- Proposed decision issued - 1985
  - Proposed cancellation of all uses but indicated EPA was requiring additional residue data to refine risk estimates.
- Final regulatory decision (PD 4) issued February 1989 - cancelled uses on 42 crops and retained use on 24; remaining uses yield 10^{-6} dietary risk.

7. **Chlorothalonil**:

- Initially registered - 1966
- Registration Standard issued - September 1984
- Second Registration Standard issued September 1988 concluding dietary risk due to oncogenicity acceptable at 10^{-6} level.

8. **Folpet**:

- Initially registered - 1962
- Registration Standard issued June 1987
  - B2 oncogen (probable human oncogen)
  - all agricultural uses suspended for failure to generate data
  - only industrial uses are being marketed

9. EBDCs

- Initially registered - Zineb - 1966
  - Mancozeb - 1967
  - Maneb - 1967
  - Metiram - 1966
- Special Review begun - 1977; concluded - 1982
  - Deferred regulatory decisions because of uncertainty about dietary and applicator exposure to common metabolite ETU.
- Additional residue data required October 1984 and April 1985
- Some registrations suspended because of failure to satisfy these new data requirements
- Data received in 1986 - except for mancozeb, residue data found to be deficient in key areas
- Registration Standard issued - mancozeb and nabam - March 1987 - metiram and nabam - 1988
- Special Review reinitiated in July 1987 due to oncogenic, thyroid, and teratogenic effects
- PD 2/3 proposed decision due to be issued shortly

Question 8

When will all the food use chemicals (the List A chemicals) be reregistered?

The Office of Pesticide Programs is working on a plan to schedule the List A chemicals for reregistration. This plan, scheduled for completion by September 1989, will be based on the results of an inventory of the data bases of the List A chemicals. The plan will identify chemicals which are ready for reregistration decisions, schedule these decisions and estimate the resources required. It is the Agency's intent to complete the reregistration of the List A chemicals as soon as possible but certainly no later than when the reregistration activities are completed for the chemicals on Lists B, C and D. Chemicals registered for food use will be reviewed on a priority basis.

Prior to the enactment of the FIFRA 88 amendments, the Office of Pesticide Programs had begun reviewing chemicals where data required in the Registration Standard was generated and submitted to the Agency. This review was called a "Second Round Review" (Reregistration Review) and the result of the review was to make a reregistration decision and require data on the end-use products so that individual pesticide products could be reregistered. To date 19 Second Round Review documents have been completed. While the database for a pesticide active ingredient undergoing a Second Round Review should theoretically be complete, or nearly so, experience shows that most of these Second Round Reviews identify a number of new data gaps. (The gaps almost never involve the major toxicity studies, such as tests for carcinogenicity, reproductive effects, or other chronic toxicity.) When gaps exist, a reregistration decision must be postponed until the required data are submitted and reviewed. This situation results from several factors, including tier testing (in which the results of one study indicate the need for additional testing, e.g. environmental fate and ecological effects); revised guidelines, e.g. residue chemistry; new data requirements; and inadequacies in new studies submitted by registrants.

As part of the efforts to implement FIFRA 88 amendments, we decided that the reregistration status of each of the List A chemicals should be determined. The reregistration plan for these chemicals will be based on the results of this List A inventory project. The objective of the List A inventory project is to identify action needed to accomplish reregistration of products containing each List A chemical. The Agency will identify chemicals whose data bases are complete enough to conduct a thorough evaluation and regulatory analysis to make a reregistration decision and those chemicals for which more data are needed before a reregistration review can be conducted.

As soon as the inventory is completed, an overall List A Strategy Plan will be developed which will prioritize and schedule chemicals for review and closure. Resource estimates will also be included in the plan.

Lists B, C and D also include some food use chemicals although not to the extent as on List A. The Agency is initiating the reregistration process of these chemicals during this and next fiscal year as provided by FIFRA section 4. These food use chemicals will be reregistered during the nine year process and in shorter time if data bases are more complete.

Question 9

It has been 20 years since the first data was available on EBDCs. Since the May 15 hearing we have been told final action will be forthcoming. When will we see a decision on EBDCs?

In June, the Agency received permission from the National Toxicology Program to use the preliminary results of their recently completed rat and mouse oncogenicity (cancer) studies on ethylene thiourea (ETU) in calculating the Agency's estimate of the risks associated with EBDCs. ETU is a degradation product, contaminant, and metabolite of EBDC pesticides. The NTP studies are considered by Agency toxicologists to be well conducted and will strengthen our risk assessment of the EBDCs. The Office of Pesticide Programs currently is finalizing its risk assessment using the NTP data and the Agency anticipates a proposed decision will be announced this fall.

Please note that while it is correct that the Agency has had some limited toxicity data on EBDC's since the 1960's, it was not until we received the exposure data in 1986 were we able to calculate the risk.

Question 10

In a recent decision on Captan, the EPA cancelled approximately half the uses of the pesticide in order to reduce the risk by half. However, EPA cancelled the use of Captan on food products like quince and leeks, but allowed it to remain on foods like strawberries, cherries and grapes. Is the risk to our children actually reduced if captan is eliminated on the foods they never eat, but allowed to remain on those foods which they eat in large quantities? Does the Agency foresee additional reductions in the uses of captan?

Answer 10

In February, 1989 the Agency concluded the Special Review (which is a risk/benefit assessment) of captan. In concluding the Special Review, the Agency reduced the overall, cumulative risk to the U.S. population from dietary exposure to this chemical by cancelling those uses (including quince and leeks) which had no, or minimal, benefits. Through the regulatory actions taken by EPA, the risks were reduced to acceptable levels with the least negative impact on the marketplace. The cumulative dietary risk from all retained uses poses a theoretical lifetime cancer risk of no more than three in a million. As explained in the answers to questions 4 and 16, the upperbound risk to children is necessarily lower than the projected increased lifetime risk. As a result of the cancellation action, risks to all segments of the population, including children, are now considered acceptable. Assuming no additional adverse effects data are received on captan, the Agency contemplates no further regulatory action under FIFRA Section 6. Tolerance revocations and reductions pursuant to the cancellation decision will be proposed shortly.

Question 11

What kind of management program does EPA have for tracking the status of reregistration reviews for all pesticide products and active ingredient cases? Is EPA able to determine where any given pesticide is in the reregistration process at any time?

Answer 11

List A Management

As described above in the answer to Question 8, EPA is conducting an inventory of the data base for each List A chemical, and based on the results of the inventory will develop a reregistration plan for the List A chemicals.

A very simple temporary computer system has been developed to store and process data about List A chemicals. Concurrently a new, permanent system is being developed which will enable EPA to build chemical-specific tables of data requirements, issue data call-in's, monitor registrants' compliance with due dates for submitting studies, manage the receipt and review of studies, and assess the status of each List A chemical.

Management of List B, C and D Chemical Reregistrations

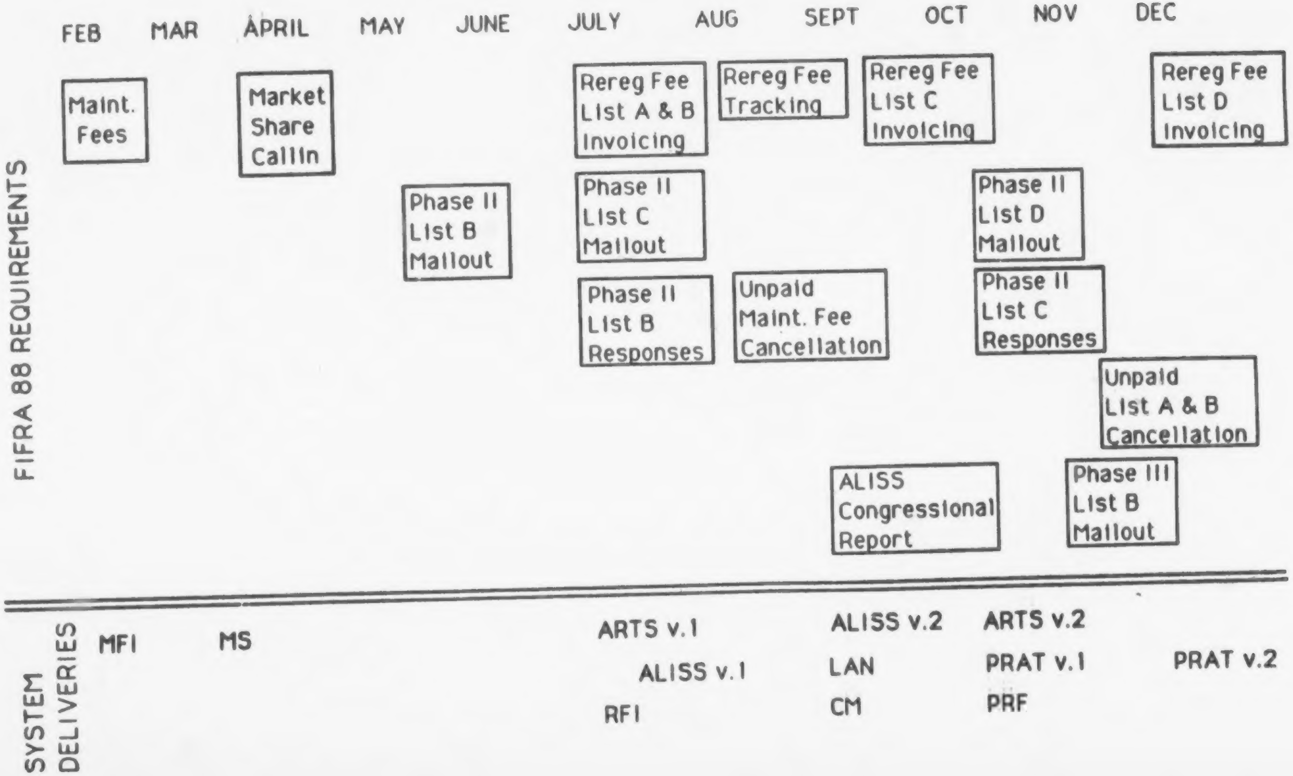
FIFRA 88 prescribes a phased approach to the reregistration of List B, C and D chemicals. Accordingly, the Agency has developed a phased process of identifying implementation requirements and building discrete modules of systems to support them. For example, one of the earliest requirements was collection of maintenance fees so the first FIFRA 88 system developed was one that generated the bills and processed the responses from registrants. Another example is the module now being used to process registrant responses to the Phase II mailing. The next module will enable preparation of the Phase III mailing scheduled for November followed by the capability to process those responses next Spring. Other modules will support the internal tracking of studies and their scientific review as they move from reregistration staff to science divisions and back. The various modules will be linked together as they are delivered.

The attached chart summarizes the key FIFRA 88 implementation milestones in 1989 and the systems scheduled for delivery to support the functions.

The additional resources provided by FIFRA 88 have enabled EPA to dramatically upgrade the technical environment for operating the new systems. By the end of September, OPP will have installed a local area network (LAN) and most managers and staff in OPP and OCM will have personal computers on their desks linked to the LAN to support their everyday functions. The LAN will provide quick access to data, powerful data sharing capabilities, and improved management of the reregistration process.

OPP Information Management Calendar

FIFRA 88 REQUIREMENTS / ADP SYSTEMS DELIVERIES
1989



FEB MAR APRIL MAY JUNE JULY AUG SEPT OCT NOV DEC

FIFRA 88 REQUIREMENTS

Maint. Fees

Market Share Callin

Phase II List B Mailout

Rereg Fee List A & B Invoicing

Phase II List C Mailout

Phase II List B Responses

Rereg Fee Tracking

Unpaid Maint. Fee Cancellation

Rereg Fee List C Invoicing

ALISS Congressional Report

Phase II List D Mailout

Phase II List C Responses

Phase III List B Mailout

Unpaid List A & B Cancellation

Rereg Fee List D Invoicing

SYSTEM DELIVERIES

MFI

MS

ARTS v.1

ALISS v.1

RFI

ALISS v.2

LAN

CM

ARTS v.2

PRAT v.1

PRF

PRAT v.2

Key to System Acronyms

ALISS - A List Inventory Support System

ARTS - Accellerated Reregistration Tracking System

CM - Cancellation Module

LAN - Local Area Network

MS - Market Share

MFI - Maintenance Fee Invoicing

PRAT - Pesticide Regulatory Activities Tracking

PRF - Product Reference File

RFI - Reregistration Fee Invoicing

Descriptions of System Functions

ALISS v.1-	Repository of clean A-List data; results of inventory.
ALISS v.2-	A-List Data Call-Ins & Data Tables.
ARTS v.1 -	Phase II Response Processing.
ARTS v.2 -	Phase III Mailout; Link to Science Division.
CM	- Repository of Pending cancellations & use deletions. - FR Notice; Registrant notification, etc.
LAN	- Local Area Network for linking systems and users.
MS	- Market Share mailout information collector for reregistration fee invoicing.
MFI	- Maintenance Fee Invoicing
PRAT v.1	- Link SRRD/Science Divisions for tracking internal documents.
PRAT v.2	- Link RD/SRRD/Science Division
PRF	- Product Status data on LAN.

Question 12

For each of the 194 active ingredient cases for which interim registrations have been developed, would you give us a schedule of when these reviews will be completed. Have you set program milestones for these reviews? Which cases will be completed on what schedules? Which ones will you do first?

Answer 12

"Active" List A Cases

List A includes 194 chemical cases for which Registration Standards have been completed prior to December 24, 1988. To date, all registrations have been cancelled in 18 cases, and all product registrations are either cancelled or suspended for another 8 cases. Therefore, the number of active chemical cases at this point is 168. It is anticipated that additional chemical cases may be cancelled as a result of the imposition of reregistration fees which are due on August 25, 1989.

Reregistration Plan

For the remaining 168 "active" chemical cases, the results of the currently ongoing inventory (See the answer to Question #8 for additional information) will enable the Agency to develop a reregistration plan for the List A chemicals. The inventory work is scheduled to be completed by the end of August and the List A plan by September.

The plan will indicate for each chemical when it will be ready to be reviewed for reregistration or other short term measures (i.e., calling in additional data immediately) which must be done to assure that the data are as complete as possible prior to scheduling for reregistration decisions. Also, the plan will include a prioritization scheme for scheduling chemicals to be reviewed. This scheme will be "risk-based" and give priority review to those chemicals that have Special Review concerns, ground water concerns, wildlife effects, or other possibly significant risks. A discussion regarding the definition of reregistration and resources will also be incorporated into the plan.

Question 13

Would you explain how EPA will apply reregistration decisions on the active ingredients to the estimated 35,000 individual pesticide products containing active ingredients subject to reregistration? Has EPA or does it intend to propose/implement a plan for reregistering each pesticide?

Answer 13

The Agency will first call in any outstanding data which are necessary to evaluate the active ingredient. If the data base is adequate and complete, products containing the pesticide will be eligible for reregistration. At that time, product-specific data will be called in (product chemistry data and acute toxicology studies) for individual products or representative products containing the active ingredient determined to be eligible for reregistration. These data will be used to determine if any modifications to the existing labeling are needed prior to reregistering the product. Review of the product-specific data and label revisions are the final steps in the reregistration process.

In the List A plan, the scheduling of reregistration reviews and resources needed will include the calling-in and review of product specific data and the determination of whether to reregister pesticide products. A similar plan will be developed for List B, C, and D products as the reregistration process for these lists gets closer to Phase V of the reregistration process.

Question 14

How does EPA plan to ensure that registrations are kept current after reregistration is complete? Do you currently have the capability to reregister chemicals every nine years as the draft amendments to FIFRA propose?

Answer 14

As part of our planning for the implementation of the 1988 FIFRA amendments, the Agency recognized the necessity to maintain the currency of registrations both during and after the completion of the reregistration process. We are investing a substantial amount of resources in changing the basic infrastructure of the regulatory program, particularly the management of information systems, so that we do not lose the benefits of the reregistration review. (Refer to the answer to question 11 for additional information.) In addition these changes will insure that new information on a pesticide chemical will be routinely and continuously available as part of the chemical's data base as new information, affecting either hazard or exposure scenarios, becomes known to us.

We do not currently have the capability to reregister chemicals every nine years as the draft amendments to FIFRA propose. Modifications to our infrastructure being made in support of the reregistration requirements will provide the basic systems to do this job, but we will need additional resources to maintain, improve and use those systems. Resource estimates are uncertain right now since we are, in effect, piloting what these systems and processes would be as we proceed through the accelerated reregistration program.

Question 15

What does EPA plan to do to address the need for premarket testing of food use pesticides for neurotoxicity? Will testing for chronic low-level exposure effects be required? If so, when will this testing be implemented?

Answer 15

EPA plans to require all pesticides, including food-use pesticides, to be tested for neurotoxicity. The acute and subchronic testing planned includes a functional observational battery, motor activity and neuropathology. Certain pesticides will also be tested for developmental effects, that is, young animals exposed during development will be tested for behavioral changes and neuropathology. In addition, organophosphate pesticides will continue to be tested for organophosphate-induced delayed neurotoxicity, and other specific classes of chemicals will be tested for potential neurotoxic effects unique to those classes.

The subchronic testing required will identify the neurotoxic effects associated with 3-months exposure, and we do not expect the effects of chronic exposure to differ qualitatively. In addition, this testing will identify compounds with the potential to produce neurotoxic effects after chronic low-level exposure that may warrant further testing.

The Agency is currently revising the neurotoxicity guidelines originally developed for testing under the Toxic Substances Control Act. A review of these guidelines by the FIFRA Scientific Advisory Panel and the public is expected in the Fall, 1989. The new data requirements are expected to be proposed by the end of 1989. Although these data requirements have not been codified in the Agency's data requirements rule, 40 CFR Part 158, we have already begun notifying registrants of these future testing requirements as part of the reregistration activities currently underway under the 1988 amendments to FIFRA.

Question 16

EPA should reassess tolerances and set new tolerances to protect infants, children, pregnant women and other sensitive subpopulations. What information on dietary consumption is EPA now using? How will the TAS program be used for pesticide regulation? How will changing diets and variations among the diets of, for instance, men and women be factored into new tolerance levels? What will EPA do to ensure that tolerances protect sensitive subpopulations?

Answer 16

I agree that tolerances should be reassessed and that the Agency should establish new tolerances whenever warranted to protect sensitive population subgroups and the population in general. The Agency believes that the risks to different population subgroups generally should be taken into consideration when assessing health risks posed by a pesticide, and that EPA should regulate on the basis of the most highly exposed population subgroups when it is scientifically sound and responsible. However, as discussed below, in most cancer risk assessments this is not the case.

In assessing risks, the Agency must take into account the nature of the health effect (toxicological end-point) when deciding which subgroup(s) should be examined for exposure. For example, if one is assessing the risk of toxicity resulting from in utero exposure to a pesticide, the only relevant exposure is to pregnant women. Thus, women of childbearing age (not males, or females too young to bear children) would be the appropriate subgroup for which to consider potential exposure. For other types of health effects, particularly acute (or short term) effects, scientists would look at each of the age subgroups and carefully examine the potential risk to the most highly exposed, usually infants and children.

However, since cancer is an effect caused by chronic (long term) exposure, dietary cancer risk assessments are usually designed to ascertain the risk posed by a lifetime of consumption of the residue in question. The Agency estimates lifetime cancer risk by first estimating lifetime exposure. Lifetime exposure for a particular pesticide is estimated by using average food consumption estimates for the overall U.S, population , which includes each of the age subgroups (infants, children, adolescents, and adults).

It is important to note that EPA's Tolerance Assessment System (TAS) has data on food consumption patterns and can identify exposures for the general population and 22 different population subgroups. These data are compiled from the results of the USDA's 1977-78 Nationwide Food Consumption Survey. The survey is repeated at approximately 10-year intervals, and a new one will be available soon. The incorporation of the latest consumption statistics will reflect changes in dietary habits in recent years.

However, average daily exposures for those subgroups differ significantly only between age groups. While children and infants have markedly different eating patterns from adults, the differences in lifetime exposures between other subgroups (e.g., men and women, people from the northeast or southwest, ethnic groups, etc.) are minor. Thus, in discussing effects of chronic exposure, "highly exposed subgroups" would refer most frequently to age groups, specifically non-nursing infants and children, who tend to consume greater quantities of food in proportion to their body weight than do adults.

The difference in eating habits, in terms of type of food and amount of food consumed in relation to body weight, causes the differences in average daily exposure for different age subgroups. For cancer risk, summing the risk of age subgroups yields the cancer risk estimate for the overall population. Thus, the risk for any age subgroup is always less than the lifetime risk. Since EPA uses lifetime risk in making most regulatory decisions, the risk for a particular age subgroup is seldom considered separately in the decision-making process.

There are, however, two sets of circumstances in which the Agency does consider a detailed analysis of cancer risk for highly exposed subgroups. In both cases, one or more groups are shown to sustain a greater risk for the time period for which the assessment is being conducted.

1. In cases where the cumulative risk is unacceptable and the Agency must decide whether actions (such as suspension, expedited special review, or interim restrictions) should be taken before the regulatory decision process would normally conclude. In this case, the period of exposure in question -- the time it would take to reach a final decision -- is less than a lifetime, and thus, potential exposure during the time being considered is the only relevant measure of exposure, and consideration of the exposure to an age subgroup is justified.

   For example earlier this year, EPA was considering a range of regulatory actions affecting daminozide, also known as Alar. The Agency considered extending the tolerance for daminozide for a period of 18 months, during which time the Agency hoped to take final regulatory action. In that case, the only time period of exposure the Agency had to consider was the next 18 months. Therefore, greater exposure to infants and children was significant and was taken into consideration.

2. If the available data suggest that the potential sensitivity to a carcinogen of a particular age subgroup is greater than that of the general population (for example, data showing that there is the tendency for early onset of tumors). An example of a chemical for which dietary exposure to a population subgroup was significant in the risk assessment is Avermectin B_1. For the chronic dietary exposure assessment, the TMRC (theoretical maximum residue concentration), expressed as a percent of the ADI (acceptable daily intake), was calculated in this case both for the general population and for infants and children, the most highly exposed population subgroups. For the acute dietary exposure analysis, exposure to women of childbearing age was specifically addressed, since developmental toxicity is an effect of concern.

Although the Agency currently has a policy governing the use of subgroup exposure estimates in risk assessments, this policy has not been articulated in writing. I believe it would be useful to record this policy and accordingly, the Agency will soon draft a policy statement to articulate how it uses subgroup exposure estimates in risk assessments. I would be happy to provide it to you as soon as it is available.

In connection with this issue, the Agency has asked the National Academy of Sciences to conduct a study of scientific and regulatory issues concerning pesticides in the diets of infants and children, including the issue of how to assess risks and establish tolerances that protect them. The study, which is expected to be complete in the fall of 1990, is likely to provide important information which will be useful in improving EPA's ability to evaluate and estimate risk, and may lead to different ways of handling exposure. Thus, when the NAS study becomes available, the Agency may need to revise or expand its policy statement.

Question 17

What is the nature of the current intra-agency dispute over 2,4-D? I understand that based on the NCI studies, the Office of Research and Development wants to categorize 2,4-D as a B2 carcinogen; however, the Office of Pesticides Programs is unwilling to designate this chemical as a probable carcinogen because there is no animal data only human data. Given that there is human data which indicates that 2,4-D is a potential carcinogen, it would appear that it is certainly appropriate for EPA to continue its special review. Will you continue the special review? How do you believe a chemical for which there is human data but no animal data should be handled by the agency? Assuming there is equivocal data, should this widely used pesticide be allowed to remain on the market with no new restrictions on use?

Answer 17

Both EPA offices agree that the NCI studies are well-designed and executed. Moreover, both offices follow the EPA policy that reliable human data may serve as the basis for regulatory actions. OPP, however, cites several limitations in the NCI Kansas study which may prevent the study from being considered sufficient evidence of carcinogenicity of 2,4-D. Limitations can include not accounting for the different lifestyles of farmers exposed to phenoxy herbicides compared with the control group of non-farmers. ORD believes that the NCI Kansas study, when considered along with similar studies, provides limited human evidence of carcinogenicity. Two additional NCI epidemiological studies are due to be published in December, 1989 and Spring, 1990. To resolve the differences between the two offices, OPP is proposing that when these studies are received, EPA will convene a meeting of nationally recognized experts in the area of epidemiology and toxicology to review all human and animal data available and assist the Agency in making a determination regarding the carcinogenicity of 2,4-D. Once the determination on carcinogenicity is completed, the Agency would make a decision whether or not to initiate a Special Review of 2,4-D. 2,4-D is not formally in Special Review at this time. There is some animal data available for 2,4-D. Registrant-conducted rat and mouse oncogenicity studies were negative at the doses tested. However, the Agency has determined that the available animal tests are inadequate because a Maximum Tolerated Dose was not achieved in either study and the Agency has required these studies to be repeated. The Agency will not wait until the rat and mouse studies are completed to make a decision whether to initiate a Special Review on 2,4-D.

Question 18

In view of the fact that only about 40-50% of food use pesticides currently in use can be routinely detected in food, that Alar residues were not measured until 1985 and that EBDCs were not measured in food until two years ago, how will EPA ensure compliance with tolerance requirements?

Should the use of a pesticide be allowed if the pesticide cannot be routinely detected in raw or processed food?

Should EPA require manufacturers to develop practical methods for detecting pesticide residues before allowing the pesticide on the market?

Answer 18

Although EPA establishes tolerances, the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) are responsible for enforcing tolerances. Thus FDA and USDA have the responsibility to ensure compliance with tolerance requirements.

EPA does work closely with FDA and USDA, especially in the area of assuring that analytical methods are available to enforce tolerances. EPA requires that an analytical method suitable for enforcing the tolerance be available before a tolerance is approved. These methods are validated in EPA laboratories before a tolerance is established, and are published by FDA in volume II of the Pesticide Analytical Manual (PAM II).

I believe that the statement that "only about 40-50% of food use pesticides currently registered can be routinely detected in food" refers to the fact that the multi-residue methods (MRMs) used by FDA to monitor pesticide residues in food are capable of detecting 40-50% of the pesticides. As stated above, EPA assures that a method is always available to detect pesticide residues in food. However, the methods supplied by EPA are usually single residue methods (SRMs) that are capable of detecting only one pesticide per analysis. The MRMs on the other hand are capable of detecting many pesticides with only one analysis. Obviously, it is less costly to use methods that are capable of detecting many pesticides with one analysis rather than to have to reanalyze the same sample for each pesticide of interest. While FDA could analyze for all pesticides with a tolerance, the cost is prohibitive. Thus, FDA relies on their MRM technology for most of their monitoring and only uses the SRM methods for pesticides of special concern.

Some of the SRMs are more time consuming and require more expensive instrumentation than is desirable. This is especially true for many of the newer pesticides since the technology for detecting pesticides has advanced rapidly over the years. EPA has worked with FDA, USDA, the States and other chemists in an effort to make more modern, efficient methods available for detecting pesticide residues in food.

EPA does not require that a pesticide be detected by the MRMs used by FDA and USDA before registering the pesticide. EPA does have general criteria on the acceptable complexity and cost of an analytical method proposed for enforcing a tolerance. It has been EPA's position that newer, (and more environmentally sound) pesticides should not be kept off the market solely because the analytical methodology for detecting residues is more complex.

EPA has recently required registrants to determine whether their pesticides would be detected by FDA's multi-residue methods. As stated earlier, EPA does not deny the use of a pesticide solely because FDA's MRMs do not detect a new pesticide. However, this information on whether a pesticide is detected by current MRMs is very useful to FDA in directing their research efforts toward the development of new MRMs and expanding the number of pesticides detected by current MRMs.

Finally, I note that neither Alar nor the EBDCs are detected by FDA's current multi-residue methodology. However, it is my understanding that FDA first analyzed for Alar in food in 1981 through SRM's, and that FDA has been analyzing for EBDCs since the late 1950s.

Question 19

Does EPA have sufficient qualified scientists and sufficient resources to comply with the nine year reregistration schedule mandated by the 1988 FIFRA amendments? If not, what additional resources are needed, and how does EPA expect to obtain them?

Answer 19

Right now I can't say that we have everyone on board that we need to accomplish this job, but we are running a very aggressive recruiting campaign and results so far are ahead of our targets. By the middle of August we expect to have job commitments for over 125 additional personnel being hired specifically for implementation of FIFRA 88. We have established outreach programs to search for qualified applicants all over the country, and I think we are being particularly effective in reaching targets of opportunity which had been previously unexploited. However, we are in many instances searching for personnel who are in demand because of their highly technical skills and we do experience some difficulty in both recruiting and retaining them.

There are a lot of uncertainties with any nine year projection but at this time we are comfortable with projections of resource needs and availability for the next few years. There are two areas of uncertainty that affect the overall projections: the number of chemicals subject to reregistration and the amount of revenues to be collected through reregistration fees. Both of these uncertainties will be substantially resolved over the next several months. Registrants of the last list of chemicals will be required to declare whether or not they will support their chemicals for reregistration by the end of January, 1990. At the same time they will be required to pay the first installment of the two part reregistration fee. This payment will establish their eligibility for the various waivers and fee adjustments specified in the Act, thus permitting a more exact calculation of what fee revenues will be, as well as final definition of the universe of chemicals subject to reregistration. All of our projections are predicated on the assumption that the fee revenues augment a continuation of our current service budget level for reregistration activities.

Question 20

I have heard that more than 30% of the studies from registrants needed for reregistration are behind schedule. Please provide, to the best of the Agency's ability the exact number of studies required for reregistration which are now behind schedule? What enforcement actions has EPA taken, if any, in cases where data was not submitted in a timely fashion?

Answer 20

Because of the inadequacies of the current computer system used to monitor compliance with the requirements levied on chemicals, accurate estimate of non-compliance is not available at this time. We believe, however, that the percentage of overdue studies is below the 30% estimate in your question.

We are currently in the process of reviewing the status of all data requirements issued in Registration Standards (List A inventory). As part of the List A inventory process, the Agency will identify studies which were required in the Registration Standard and Data Call-In Notices, have not been submitted, and are now apparently overdue. The task of determining the status of each overdue study is scheduled for September and October of this year. For studies that are overdue the Agency will initiate compliance action.

Finally, as noted in response to Question 8, we are implementing effective new systems to monitor registrant compliance with data and other requirements of the reregistration process. The responsibility for tracking compliance and initiating appropriate enforcement is being transferred to EPA's Office of Compliance Monitoring.

Question 21

Tolerances are not systematically reassessed and revised as EPA receives new data indicating the carcinogenicity of pesticides and/or the existence of other chronic ill-effects. Tolerance revision should occur immediately when EPA learns of new or higher risk than were assumed when the legal residue level was initially set. How will EPA use new data on health and environmental effects of pesticides, obtained as a result of the 1988 amendments to FIFRA to reassess tolerances at new levels which will truly protect the public?

Answer 21

When EPA receives data indicating that use of a pesticide many cause significant risks as the result of dietary exposure, non-dietary exposure, or both, EPA promptly assesses the risk and determines what regulatory action is needed. Usually the Agency conducts a Special Review of the pesticide's uses, but if risks are extremely large, EPA may suspend the registration and use under FIFRA. The Agency's policy is to act first to regulate the distribution and use of risky pesticides -- taking into account all types and routes of risk, followed by any necessary actions affecting tolerances. This practice of dealing first with use and later with residues resulting from such use is based on the policy that it is illogical to permit use which results in illegal residues. Absent a significant public health threat, such action is difficult to justify and fosters mistrust of the regulatory process and could encourage misuse. (In rare cases, where pesticide residues remaining in the diet following a halt in use would present a significant risk, EPA will act to revoke or lower tolerances to protect public health.) Under FIFRA 88 the Agency will continue this practice however at an accelerated pace as the Agency steps up its data call-in and review activities. In addition to data indicating potentially unacceptable risks, EPA will receive in the course of the FIFRA 88 reregistration process large amounts of information which will allow the Agency to establish more accurate, defensible tolerances. As EPA conducts its Second Pound Reviews of List A pesticides or its Phase IV and Phase V reviews of List B, C, and D pesticides, the Agency will reassess and revise tolerances as appropriate.

Question 22

As you know during the May 15th oversight hearings, I expressed serious concerns about the use of the SAP by the EPA, potential conflicts of interest on the part of former members of the SAP, and the narrow professional background of the membership of the SAP. What role do your see the SAP playing at EPA in the future? Is their job to comment on the science or make a regulatory determination?

Do you believe that SAP member should be allowed to consult for the chemical industry while they are members of the SAP?

Do you believe the membership of the SAP should be expanded to include pediatricians and public health experts? What actions will EPA take to ensure that such an expansion takes place?

Answer 22

As specified under Section 25(d) of FIFRA, the role of the Scientific Advisory Panel (SAP) is to provide comments as to the impact on health, and the environment, of the following regulatory actions:

a. Notices of intent to cancel or reclassify registrations under Section 6(b)(1) of FIFRA;

b. Notices of intent to hold a hearing to determine whether or not to cancel or reclassify registrations under Section 6(b)(2) of FIFRA;

c. Proposed and Final Regulations to be issued under Section 25(a) of FIFRA.

d. Suspension orders under section 6(c).

The EPA will continue to submit these documents to the SAP for scientific comments as to the impact on health and the environment, and will also seek the SAP's comments on guidelines for testing, exposure models, scientific issues relating to risk assessment and for peer review of major scientific studies.

I believe it is the role of the SAP to provide comments on the science. I do not believe it is the role or responsibility of the SAP to review the non-scientific aspects of regulatory determinations. Thus, I will be seeking comments from the SAP on the scientific analysis that is the basis of our regulatory decisions, but I will not be asking the SAP to comment on the Agency's regulatory decisions.

SAP members are subject to the conflict of interest rules that apply to Special Government Employees. Basically, such employees may not engage in outside activities which present a conflict of interest in their government position, that is, they are precluded from participating in any decision in which they or their non-government employer has a financial interest in the outcome. It is important that we obtain the best qualified individuals for these positions to reflect state-of-art knowledge in their specific scientific field. Because their expertise is in high demand, they frequently consult with chemical companies. While we recognize the importance of avoiding conflict of interest to maintain objectivity in decision making, we also believe that the total elimination of all outside consulting would lower the quality of SAP membership. Current requirements dealing with conflict of interest provide that SAP members must recuse themselves from decisions involving any companies for which they are currently consulting. Additional restrictions on post-employment activities of former SAP members also apply.

I believe that there is concern about "outside consulting" that goes beyond the important issue of specific conflicts of interest. This is a general concern for the objectivity of the Panel's membership. I believe that the Panel should be comprised, not only of a mix of technical expertise, but also represent a spectrum of approaches on the interpretation of risk assessments. As a non-scientist, it is important to me to have an independent review of the scientific analyses performed within the Agency, which addresses the strengths and weaknesses from a variety of viewpoints. As the Agency moves to add new people to the Panel, we will be looking not only to continue the mix of technical expertise, but also to broaden the diversity of the membership.

Let me explain what types of expertise EPA seeks in the nominees to the SAP. In determining the specific scientific discipline(s) which are needed to advise the Agency, we consider the types of issues which the SAP has addressed, as well as the issues expected to arise in the future. Often, the scientific issues presented to the Panel have dealt with the carcinogenicity of selected pesticides which the Agency has reviewed in its Peer Review process or for which Special Review has been initiated. Such issues benefit from comments by experts in several fields including a toxicologist knowledgeable in the evaluation of animal laboratory studies of carcinogens and the variables to be considered in extrapolating these data to human risk assessment, a veterinary pathologist capable of evaluating the significance of pathological changes in several species for relevance to humans, and a biostatistician to review the statistical evidence in relation to human risk assessment.

I also wish to note that FIFRA requires the SAP members "be selected on the basis of their professional qualifications to assess the impacts of pesticides on health and the environment." Since this assessment usually turns on the evaluation of laboratory and controlled field studies, the training and experience of public health experts and pediatricians may not always be useful.

Although the membership of the SAP is limited by law to seven members, who serve staggered appointments, the Agency routinely brings scientists with specific expertise to assist SAP members on issues requiring such expertise. We make every effort to have a balance of expertise on the standing SAP and to supplement this expertise, as necessary. Thus, a pediatrician or public health expert can be added to the Panel on an ad hoc basis, in a case where such expertise would be helpful.

I also wish to note that EPA is not limited to the SAP membership for scientific peer review. We routinely consult with other independent scientists, such as groups convened through the National Academy of Science or individuals through consulting contracts, to obtain additional review and assistance in our scientific analysis.

JOSEPH I. LIEBERMAN
CONNECTICUT

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August 3, 1989

The Honorable William K. Reilly
Administrator
U.S. Environmental Protection Agency
Washington, D. C. 20460

Ms. Linda J. Fisher
Acting Assistant Administrator for Pesticides and Toxic Substances
U.S Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Administrator and Ms. Fisher:

I have received responses to the questions I submitted to Ms. Fisher related to her nomination to be Assistant Administrator of Pesticides and Toxic Substances. While I am satisfied with the responses to certain questions, I am frankly disappointed by the answers to many others and remain deeply concerned that the Agency is not prepared to take the strong action that is necessary to protect people from chemicals in our food supply.

In addition, my staff and I have been watching EPA's proposed pesticides legislation deteriorate with each successive draft. I understand that the response of the regulated producers and industries to your draft has been less than favorable. As you know, this is hardly surprising as those who have enjoyed the benefits of what Agency officials have described in the past as a flawed statute may now have to face more serious regulatory standards. I am, however, disturbed to hear that EPA's limited set of legislative fixes may further erode beyond even the most recent drafts before the Administration submits a bill for Senate consideration.

I am taking this opportunity to review with you some of the answers that I am particularly concerned about. Sufficient regulation of pesticides will not exist until the Agency truly decides to focus its existing regulatory energies and attention on this problem area.

Scientific Advisory Panel Composition (Question 22)

As you know, over the past several months I have expressed a number of concerns about the Scientific Advisory Panel (SAP). I was troubled by the answers to my questions concerning the SAP. In my meeting with Ms. Fisher I understood her to indicate that she believed the inclusion of pediatricians and public health experts on the SAP would be a useful addition to the panel. In her response to Senator Reid's written questions she stated that "the training and experience of pediatricians would seldom be useful." In her response to my written question she states that "the training and experience of public health experts and pediatricians may not always be useful." I am disturbed by the varying responses we have received; more importantly, I am concerned by the apparent determination that the expertise of pediatricians and public health experts is not truly useful to the work of the SAP.

Pursuant to FIFRA SAP members are "selected on the basis of their professional qualifications to assess the impacts of pesticides on health and the environment." One of the primary concerns which has been raised about pesticides is their potential disproportionate effects on children, both carcinogenic and neurotoxic. Pediatricians active in scientific research are in a unique position to provide their expertise on the impact of pesticides on the health of children. It is difficult for me to understand why their input would be irrelevant or not useful to the panel. The SAP is charged with assessing scientific data to determine whether that data provides sufficient information about the potential impact of the pesticide on human health and determining whether the pesticide poses a risk to human health, certainly public health specialists and pediatricians have a role to play in these evaluations.

Conflicts of Interest (Question 22)

As you know, I have been concerned about conflicts and the appearance of conflicts on the part of members of the SAP. Ms. Fisher's response in defense of SAP members simultaneously reviewing chemicals and serving as chemical industry consultants and her assertion that barring outside consulting would lower the quality of the panel is not acceptable to me. I have requested in my letters to you of May 15th and July 19th a full review of the rules governing consultation by members of the SAP, but I have yet to receive an explanation of EPA's views on these conflicts. Nor have I received any indication as to what EPA will do in the future to alleviate these conflicts or, at the very least, to ensure that all potential conflicts are a matter of public record. The response to Question 22 provides no reassurances in this regard.

Risks to Children (Questions 4 and 16)

In several of her answers (Responses to Questions 4 and 16) Ms. Fisher suggests that children are not at a greater risk from their exposure to pesticides and argues that they do not require special tolerances. This approach to a very serious issue concerns me for a number of reasons. First, at the May 15 hearing we received extensive testimony that children may well be at special risk because of their lower body weight and less developed immune system. Second, Ms. Fisher's response to Question 16 seems to admit as much (p. 24) when it references the

National Academy of Science's study on the issue ("when the NAS study becomes available, the Agency may need to revise or expand its policy statement."). Third, EPA's Dr. Jack Moore's testimony at the May 15th hearing also referred to the "current study dealing with giving the agency advice as to whether or not infants are at special risk and, if so, what policy changes should one make in our operations." Given that EPA requested this study and is presumably awaiting its results, the conclusory statements that infants and children are not at special risk and are entirely protected by the existing system concerns me.

Even if EPA does factor infants' and children's greater consumption of some foods into its lifetime risk figure, it may be, as in the case of Alar, that the overwhelming risk from certain pesticides comes in the first five years of a person's life. This is also what makes speedy attention to reregistering food use pesticides a high priority -- waiting another ten years to complete reregistration could expose millions of people to the greatest proportion of their estimated risk from some of these pesticides.

Neurotoxic Effects (Question 15)

I am also concerned that Ms. Fisher addresses only the issue of cancer risk and does not discuss the potential increased risk of infants and children for neurotoxic effects. It is unclear from the answer to Question 15 when testing for neurotoxicity will actually be implemented and how EPA will determine which pesticides to test for developmental effects. I find no indication in Ms. Fisher's responses that the Agency will seriously focus on the potential of increased risks, either of cancer or of neurotoxic effects, to children.

Priority Review of High Risk Pesticides (Question 7)

In my written questions and in my meeting with Ms. Fisher, I expressed concern about the ten most dangerous pesticides which according to a National Academy of Sciences' 1987 report cause 80 percent of the exposure risk to the public. I understand Ms. Fisher's technical argument that these particular ten may not actually constitute 80 percent of the risk. However, I am more concerned that the thrust of the question has been lost; there still appears to be a lack of emphasis on setting priorities at EPA and getting that group of chemicals which is most dangerous, whether that number is 10 or 50, off the market. I am further concerned that EPA has allowed a number of these 10 to remain on the market for far too long.

Warning Labels (Question 6)

I was also concerned by the answer to Question 6 concerning the placement of warning labels on food products that have been treated with pesticides which cause an increased risk of cancer. For example, Ms. Fisher's argument that, "in handling and processing of agricultural commodities items are washed and handled mechanically, making it difficult to keep labels on the produce" is less than convincing. Since many companies manage to place labels on their bananas, apples and oranges, it is difficult for me to imagine that it would be so complicated to label fruit and make the labels adhere properly, and even less so to place labels on processed foods that contain a mix of treated and untreated food. As with saccharin, the label might simply read "a pesticide used on this product has been found to cause cancer in laboratory animals." The lesser alternative of a straightforward content label is not considered.

Reregistration (Question 8)

In Question 8, I asked Ms. Fisher when the food use chemicals on List A would be reregistered. She responded "It is the Agency's intent to complete reregistration of the List A chemicals as soon as possible but certainly no later than when the reregistration activities are completed for the chemicals on Lists B, C and D." I understand that EPA is in the process of determining how it will proceed under the FIFRA 88 amendments; however, I do not find this answer at all responsive to the question. Indicating in the last sentence that they will be reregistered within the nine years required by FIFRA 88, is also not responsive to the question. Once again, I am concerned that the Agency is not really focused on the importance of reregistering, particularly food use chemicals, as quickly as possible. We are not talking about a potential nine year delay, but a twenty five year delay, since many of these chemicals have been due for reregistration since 1972 when reregistration was first required.

In light of my conversation with Administrator Reilly this morning, I ask you to review these comments. Mr. Administrator, I look forward to discussing these concerns further with you.

Sincerely,

Joseph I. Lieberman
United States Senate

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 3 1989

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

Honorable Joseph I. Lieberman
United States Senate
Washington, D.C. 20510

Dear Senator Lieberman:

This is in response to your letter of August 3, 1989, in which you expressed your continuing concern about seven specific issues raised in your written questions to me following my confirmation hearing. I appreciate this opportunity to clarify my position on these issues. I share your belief that these are important issues for the pesticide program, and I think we are in general agreement on many of the specific points you have raised. Below are my additional responses to each of the seven issues raised in today's letter.

Scientific Advisory Panel Composition

First of all let me state that I share your concern that the composition of the Scientific Advisory Panel be broad enough to provide me with the best analysis of the quality of the scientific data on which the pesticide decisions will be based, and the relevance of the data to various sensitive populations, especially infants and children. I also agree that chemicals which I will be reviewing may raise particular concerns because of the risks posed to infants and children. In such cases, advice of pediatricians or public health specialists, especially those who are active in scientific research, could be very valuable as I make such decisions. For this reason, I do intend to exercise my authority to add such individuals to the Panel on an ad hoc basis for the purposes of reviewing the science for such decisions.

As you know, the Panel is limited to seven members. I hope that the size of the Panel will be expanded as the Congress considers FIFRA for amendment. In the meantime, as positions on the Panel open up, I will place new emphasis on the search for pediatricians and public health experts for membership on the Panel. I intend to work with the National Institutes of Health and the National Science Foundation, who make recommendations for the Panel, to identify for consideration individuals that have training as pediatricians or public health experts as well as the necessary scientific research credentials.

Conflict of Interest

The integrity of the Panel and the public's perception that it provide the Agency with independent, objective opinions are of fundamental importance to me. I do believe that, at a minimum, there should be full public disclosure, to the extent permitted by law, of any potential conflicts of interest. I remain concerned that an across the board bar on consulting with the chemical industry by members of the Panel may adversely affect our ability to attract the necessary quality and diversity of membership. Because of the concerns that you, Senator Reid, and others have raised in the wake of the Alar controversy, I will be working with our General Counsel to review our existing laws and regulations on conflicts of interest to ensure that they are strong and make any improvements that are necessary. I will follow up with you once this review is completed so that we can further discuss the best way to ensure that the public maintains full confidence in the Panel.

The Risks to Children

I am concerned about the possibility that children may be particularly sensitive to the adverse effects of pesticides. There are many important, but unanswered questions as to how the Agency can most effectively take this into account in its analysis of particular pesticides. Last year, EPA asked the National Academy of Sciences (NAS) to do a study on the potential sensitivity of children to pesticides and how to address this in decision-making. The NAS study will focus on when it is appropriate to consider the risks to children differentially in pesticide risk assessment and on what techniques are the most appropriate for doing this. This study is to be completed by the end of 1990. I will review the NAS recommendations and incorporate them, where appropriate, into Agency policies.

In addition, I believe it would be useful to provide more information to the public on the risks to the most highly exposed sub-groups, such as infants and children. Accordingly, when we issue future Federal Register notices announcing major actions involving pesticides, we will provide information on differences in risk levels that may exist for infants, children, or other identified segments of the population.

Neurotoxicity

I agree that neurotoxicity testing is very important because of the potential risk to children, whose nervous systems are still developing. We expect that, within 3 to 5 months, neurotoxicity testing methods will be established and registrants will be required to perform these studies on pesticides going through the registration and reregistration processes. In order to expedite these tests, EPA has already informed registrants of these future requirements so that they could plan accordingly.

We are continuing to work on defining the conditions under which the Agency should require the more sophisticated tests for developmental effects on the nervous system. At this point the scientific community advises us that such requirements be imposed on a case-by-case basis, after review of the results of more routine studies, including the new battery of neurotoxicity tests.

Food Labeling

The Administrator and I strongly support public education on food safety issues, and I intend to improve and expand EPA's efforts in this area. It is important that consumers have useful information in order to make informed decisions about food purchases. I remain concerned, however, about the effectiveness of warning labels on food. Limited experience with warnings on food has brought to light a number of practical problems that should be considered and resolved to have a successful program. A labeling program that is not carefully developed may confuse or actually mislead consumers as to the risks posed by certain commodities and thereby further erode public confidence in the safety of the food supply. Thus, an unsuccessful food labeling program might defeat the goal we both share of providing accurate information to consumers.

Priority Review of High Risk Chemicals

I will give a priority to reviewing those pesticides which pose the greatest risk. With respect to the nine chemicals identified by the NAS report as posing the greatest dietary risk, the Agency already has taken actions to remove some of them from use.

A. 2 chemicals have been removed entirely from the marketplace: chlordimeforem and captafol.

B. 2 chemicals have been subjected to major changes in use: folpet (all food uses have been cancelled) and captan (many of the uses have been cancelled). The remaining uses of these chemicals pose a negligible risk.

Others are the subject of current Agency review:

C. 1 chemical group under intensive review for possible cancellation: EBDCs.

D. 2 chemicals subject to priority review as soon as additional data needed for risk assessment are received by the Agencies: benomyl and permethrin

Two chemicals, chlorothalonil and linuron, were reviewed by the Agency and found to pose negligible risk.

Reregistration

I want to assure you that food use chemicals have the highest priority for reregistration. Since FIFRA 88 did not establish a schedule for the majority of these chemicals (List A chemicals), as it did for the other old pesticides, EPA is now developing such a schedule, and it will be available in September. It is our intention to reregister the 194 pesticides on List A as expeditiously as possible, since we recognize that these chemicals account for nearly 90% of use and dietary exposure. I will provide you with the schedule, once it is completed.

I hope I have adequately clarified my positions on the issues you raised. I look forward to working with you on these important issues in the future.

Sincerely,

Linda J Fisher

Linda J. Fisher
Assistant Administrator-Designate

JOSEPH I. LIEBERMAN
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August 4, 1989

Ms. Linda Fisher
Acting Assistant Administrator for Pesticides and
Toxic Substances
U. S. Environmental Protection Agency
Washington, D.C. 20460

Dear Ms. Fisher:

I appreciate receiving your responses to my comments. I believe that we have established some new common ground. I hope that you will renew your efforts to see that the Agency becomes more committed to tackling the major issues involving pesticide regulation. As you know, we have a long way to go before we can rest assured that the government is adequately protecting the public from chemicals in the food supply.

Once again, I urge you to prevent the proposed FIFRA and FFDCA amendments from being weakened further. If the Agency decides to move forward with strong amendments, you will find me a relentless ally. I will move to try and obtain action on your nomination today.

Sincerely,

Joseph I. Lieberman
United States Senate

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August 4, 1989

The Honorable William K. Reilly
Administrator
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Administrator:

I was very appreciative of our two conversations yesterday and your commitment to become personally involved in the Agency's work on pesticide regulation. As you know, we have a long way to go before we can say with assurance that the government is adequately protecting the public from chemicals in the food supply.

I have received Ms. Fisher's reply to my letter of August 3rd and I believe that we have made real progress towards finding common ground on some of these issues. I appreciate your willingness to be vigilant regarding the concern, shared by many on my Committee, that the Agency is still not sufficiently committed to tackling some of the major issues involving pesticide regulation. For example, I understand that the Agency is being pressured to weaken its proposed FIFRA and FFDCA amendments further. As we discussed, it is very important that EPA's amendments remain strong in order to ensure that significant changes will occur both in our method of regulating pesticides and in the speed with which the registration is completed.

As I mentioned in our conversation, Senator Reid's Subcommittee on Toxic Substances, Environmental Oversight, Research and Development of the Committee on Environment and Public Works will be sending you an invitation to testify at our September 22, 1989 hearing on the Subcommittee's pesticides report. I very much hope that you will be able to attend.

Thank you for the time you took to respond to my concerns. I look forward to working with you on these issues in the future. I will move to try and obtain action on Ms. Fisher's nomination today.

Sincerely,

Joseph I. Lieberman
United States Senate

STATEMENT OF
J. CLARENCE DAVIES
FOR CONFIRMATION AS
ASSISTANT ADMINISTRATOR
FOR POLICY, PLANNING AND EVALUATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

JULY 27, 1989

Mr. Chairman and Members of the Committee, my name is J. Clarence Davies. I am deeply honored to appear before you today for your consideration as the nominee to serve as Assistant Administrator for Policy, Planning and Evaluation at the Environmental Protection Agency.

I would like to outline briefly for you my qualifications for the position and my expectations regarding the role of the Office of Policy, Planning and Evaluation. At the outset, however, let me make clear my commitment to work closely with this Committee and with the Congress as a whole in pursuing the vitally important cause of environmental protection.

I have spent the last 25 years dealing with various aspects of environmental policy. I got into the field quite by accident -- I was born and brought up in mid-town Manhattan, not an auspicious environment to learn about man's relationship to nature. But in 1965 I came to Washington, intending to spend a year here, so that I could be more comfortable in my chosen profession of being a political science professor. I went to work for the old Bureau of the Budget, and they made me the first budget examiner they ever had for environmental programs. I knew nothing about the subject when I started (confirming some people's worst fears about budget examiners), but I became intrigued by the challenges of environmental policy, and have been intimately involved with such policy ever since.

You have my resume and my recent writings on environmental subjects, so I will not bore you with a detailed recitation of what I have done with my life. I would like to note a few high points. I served as the first chairman of the EPA Administrator's Advisory Committee on Toxic Substances, and for a number of years I was a member of the Executive Committee of the EPA Science Advisory Board. I chaired the National Academy of Science's Committee on Principles of Decision Making for Regulating Chemicals in the Environment and served on a number of other National Academy committees. In 1969 and 1970, I was a consultant to the President's Advisory Council on Executive Organization, and in that capacity I co-authored the reorganization plan that created EPA. Thus I have had a paternal interest in the Agency since it began.

It has always seemed to me that the environment is a cause that should transcend partisan affiliations. For that reason I have directed my professional efforts to serve the environment in the most effective way possible, regardless of which political party provided the opportunity. I was grateful to spend three years working for Richard Nixon's Council on Environmental Quality, similarly, I am honored by President Bush's nomination to serve in his Administration. The public is clamoring for a better environment, and the public demand is being heard by both Democrats and Republicans. The time is ripe for bold and innovative thinking about environmental policy.

For the past 13 years I have served as Bill Reilly's Executive Vice President at The Conservation Foundation. Bill and I know each other well, we share the same views about the environment, and I hope that I will be able to continue to work with him to implement these views.

Let me turn to a brief outline of what the Office of Policy, Planning and Evaluation does and what my priorities will be if I am confirmed.

The Office engages in three types of activities. First, it reviews all regulations and most other measures proposed by EPA to ensure that they embody the most effective way to meet statutory requirements. Second, the Office is in charge of Agency planning, and in this connection it is responsible for keeping track of whether the Agency is meeting its goals and for providing a variety of services, such as program evaluation and statistical assistance, to the other parts of EPA. Third, OPPE is the lead office for two cutting-edge policy areas: pollution prevention and global climate change.

Each of these functions is vitally important and will be continued. Some, however, need to be strengthened, and there are some new activities that, in my opinion, need to be undertaken.

Pollution prevention is an example of an issue -- more precisely, a philosophy -- that Bill Reilly and I agree needs to be given much greater attention. Not only is it the most effective and efficient way of dealing with many of the tasks that now face EPA. It is in the long run, the only way of dealing effectively with such key problems as asbestos, heavy metals, and other toxic pollutants. Once these kinds of pollutants enter the environment it is either impossible or extraordinarily expensive to control them. Pollution prevention must be a basic approach in future efforts to improve environmental quality, and I pledge to this Committee that if I am confirmed, I will take steps to strengthen the Agency's ability to foster the pollution prevention approach.

Climate change is the other major issue for which the policy office has the lead. To stress the importance of the issue is unnecessary -- it has been widely recognized as potentially the most significant and overwhelming environmental challenge the planet faces. There is a pressing need for careful analysis and for the development of policy proposals to deal with the challenge. OPPE, in cooperation with EPA's Air, Research, and International Programs, has been meeting this need, as demonstrated by the two reports that we have prepared at your request. Our work on climate change will accelerate as negotiations on an international climate change convention begin.

The planning function within EPA needs improvement, and the Office of Policy, Planning and Evaluation has the central responsibility for meeting this need. The Administrator has required, for the first time, that each EPA program office prepare a four-year strategic plan. OPPE has begun to assist the programs in the preparation of these plans. One of my personal goals is for these plans to encourage the greater use of environmental indicators, based on actual measures of the condition of the natural environment, to help refine priorities for EPA.

Finally, there is a need for greater integration of environmental policy. This has two dimensions: internal and external. Internal integration means a closer relationship among the different programs within EPA. The newer environmental problems do not fit neatly into the traditional air, water, and land categories. For example, most toxic substances occur in all parts of the environment and can easily be transferred from one part to another. Thus a more closely coordinated approach is necessary.

External integration focuses on the relationship between environmental policy and other policy areas, such as agriculture, energy, and transportation. The major tasks that must be accomplished in the future to protect and improve the environment are as likely to require changes in these other policy areas as they are to require changes in EPA policy. For example, one cannot separate measures to deal with global climate change from questions about national energy policy. One consequence is that EPA must improve its ability to understand and appreciate the opportunities and constraints in these other policy areas so that it can interact with the other relevent agencies on a more profound basis. The Office of Policy, Planning and Evaluation has some staff resources in both agriculture and energy policy, and I would like to see these resources strengthened.

I hope that I have given you some basis for judging my suitability for the position. I can think of no job that is more challenging and exciting. I hope that you will give me the opportunity to work with you in meeting these challenges, and improving the quality of the environment.

I would be glad to answer any questions you may have.

* * * *

J. CLARENCE (TERRY) DAVIES

Home address: 10307 Dickens Avenue, Bethesda, Maryland 20814
Telephone No. 301/530-1597
Birth date and place: November 16, 1937, New York, New York

Experience

1976 - Present	Executive Vice President, The Conservation Foundation, Washington, D.C. Overall responsibility for all Conservation Foundation programs. Directs staff of 35 professionals.
1973 - 1976	Fellow, Resources for the Future, Inc., Washington, D.C., and Assistant Director, Institutions and Public Decisions Division. Conducted a study on how problems become political issues, with emphasis on environmental problems.
1970 - 1973	Senior Staff Member, Council on Environmental Quality, Executive Office of the President, Washington, D.C. Responsibilities included monitoring, environmental research, technology assessment, pesticides, population control, toxic substances.
1967 - 1970	Assistant Professor of Politics and Public Affairs, Princeton University, Princeton, New Jersey. Courses taught included: The Study of Public Policy, Public Policy for Pollution Control, State and Local Government, Urban Problems and Federalism.
1965 - 1967	Chief Examiner for Environmental and Consumer Protection, Bureau of the Budget, Executive Office of the President, Washington, D.C.

1963 - 1965 Instructor in Government and Director of the Bureau for Research in Municipal Government, Bowdoin College, Brunswick, Maine.

Courses taught included: Municipal Government, Public Administration, Intergovernmental Relations, Formulation of U.S. Foreign Policy.

Education

1965 Ph.D., American Government, Columbia University, New York, New York. Ford Foundation Metropolitan Region Fellow.

1959 B.A., cum laude, Dartmouth College, Hanover, New Hampshire. Phi Beta Kappa.

Publications

Books:

Risk Communication (Washington, D.C.: The Conservation Foundation, 1987) (co-editor).

Training for Environmental Groups (Washington, D.C.: The Conservation Foundation, 1984) (co-author).

Business and Environment: Toward Common Ground (Washington, D.C.: The Conservation Foundation, 1977) (co-editor).

The Politics of Pollution (Indianapolis: Bobbs-Merrill, first ed., 1970, second ed., 1975).

Neighborhood Groups and Urban Renewal (New York: Columbia University Press, 1966).

Monographs:

The Environmental Protection Act: An Integrated Pollution Control Law (Washington, D.C.: The Conservation Foundation, forthcoming).

Risk Assessment and Risk Control (Washington, D.C.: The Conservation Foundation, 1985).

Controlling Cross-Media Pollutants (Washington, D.C.: The Conservation Foundation, 1984) (co-author).

Significant New Use Rules for Existing Chemicals (Washington, D.C.: The Conservation Foundation, 1983) (co-author).

Determining Unreasonable Risk (Washington, D.C.: The Conservation Foundation, 1979) (co-author).

Articles in Books:

"A multimedia Approach to Pollution Control: Cross-Media Problems" in Pollutants in a Multimedia Environment (New York: Plenum Press, 1986).

"Environmental Institutions and the Reagan Administration" in Environmental Policy in the 1980s (Washington: Congressional Quarterly Press, 1984).

"Overall Costs and Benefits" in TSCA's Impact on Society and the Chemical Industry (Washington: American Chemical Society, 1983).

"Determining Unreasonable Risks," in Strategies for Public Health (New York: Van Nostrand Reinhold Co., 1981).

"Regulatory Issues in Toxic Substances Control Legislation," in Mechanisms of Toxicity and Hazard Evaluation (Amsterdam: Elsevier, 1980).

"Obstacles to Cleaner Air," in Air Pollution and Administrative Control (Cambridge: MIT Press, 1977).

"Measuring the Social Costs of Technological and Environmental Change," in Social Research and Public Policies (Hanover, N.H.: The Public Affairs Center, 1975).

"How Does the Agenda Get Set?" in The Governance of Common Property Resources (Baltimore: Johns Hopkins Press, 1974).

"The Role of Environmental Indices in Regional Management," in Environmental Management in the Colorado River Basin (Logan, Utah: Utah State University Press, 1974).

"The Impact of Federal Institutional Arrangements," in Federal Environmental Law (St.Paul, Minnesota: West Publishing Co., 1974).

"U.S. Energy Policy," in Growing Against Ourselves: The Energy-Environment Tangle (Boston: Lexington Books, 1974).

Also author of numerous magazine articles.

Other Activities

1987 - Present	Member, Board of Directors, Wildlife Habitat Enhancement Council
1986 - Present	Member, National Advisory Board, National Institute for Chemical Studies
1986 - 1988	Member, National Academy of Sciences, Committee on Multimedia Pollutants
1986 - Present	Member, Board of Governors, Environmental Health and Safety Institute, National Safety Council
1985 - Present	Member, Advisory Board, Center for Chemical Process Safety
1984 - 1987	Member, Science Advisory Board, International Joint Commission (U.S.-Canada)
1983 - 1985	Member, Environmental Studies Board, National Academy of Sciences
1982 - 1983	Member, National Academy of Sciences, Committee on the Institutional Means for Assessment of Risks to Public Health
1979 - Present	Member, Editorial Board, Toxic Substances Journal
1979 - 1980	Co-Chairman, Committee on Economics, Environmental Protection Agency Science Advisory Board
1979 - 1981	Member, National Academy of Sciences, Committee on Prevention of Significant Deterioration under the Clean Air Act
1977 - 1978	Chairman, Administrator's Advisory Committee on Toxic Substances, Environmental Protection Agency
1976 - 1979	Member, Senior Steering Committee, Center for Technology and Administration, American University
1976 - 1979	Consultant to the National Science Foundation
1976 -1981	Member-at-Large, Executive Committee, Environmental Protection Agency Science Advisory Board

1975 - 1977	Member, National Academy of Sciences, Committee on Environmental Decision Making
1974 - 1975	Chairman, National Academy of Sciences, Committee on Principles of Decision Making for Regulating Chemicals in the Environment
1973 - 1974	Member, National Academy of Sciences, Committee on Environmental Indices
1969 - 1970	Consultant to President's Advisory Council on Executive Organization (co-authored reorganization plan that created the Environmental Protection Agency)
1968 - 1969	Consultant to U.S. Department of Health, Education and Welfare
1967 - 1968	Consultant to U.S. Bureau of Budget

J. Clarence Davies - Publications 1985 - 1989

Risk Communication (Washington, D.C., The Conservation Foundation, 1987) (co-editor)

"The Environmental Protection Act: An Integrated Pollution Control Law" (Mimeo; Washington, D.C., The Conservation Foundation, 1988)

Risk Assessment and Risk Control (Washington, D.C., The Conservation Foundation, 1985)

"A Multimedia Approach to Pollution Control: Cross-Media Problems" in Pollutants in a Multimedia Environment (New York, Plenum Press, 1986)

"Peer Review of Regulatory Science" (Washington, D.C., American Chemical Society and The Conservation Foundation, 1986) (co-author)

"Coping with Toxic Substances," Issues in Science and Technology, vol. I, no. 2, Winter 1985

"The Situation: Institutional Problems," EPA Journal, vol. 13, no. 9, Nov. 1987

"Environmental Reform" (letter), Issues in Science and Technology vol. IV, no. 3, Spring 1988

"Beyond the 1990s" (letter), Environment vol. 30, no. 3, April 1988

"Understanding and Communicating Risk," The Chemist, May 1986

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Davies (Last) J. (Initial Only) (First) Clarence (Middle)

Position to which nominated: Assistant Administrator for Policy, Planning and Evaluation

Date of Nomination:

Date of birth: 16/11/37 (Day) (Month) (Year)

Place of birth: New York, NY

Marital status: Married

Full name of spouse: Barbara Schonfeld Davies

Name and ages of children:

Elizabeth W. Davies	25
Eric W. Davies	22

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Dartmouth College	1955-59	B.A.	1959
Columbia University	1959-63	Ph.D.	1965

Employment record: **List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.**

1963-65 - Bowdoin College, Brunswick, ME - Instructor in Government and Director of the Bureau for Research in Municipal Government.

1965-67 - U.S. Bureau of the Budget, Washington, DC - Chief Examiner for Environmental and Consumer Affairs

Employment record—Continued

1967-70 - Princeton University, Princeton, NJ - Assistant Professor of Politics and Public Affairs

1970-73 - U.S. Council on Environmental Quality, Washington, DC - Senior Staff Member

1973-76 - Resources for the Future, Inc., Washington, DC - Fellow and Assistant Director, Institutions Division

1976-89 - The Conservation Foundation, Washington, DC - Executive Vice President

Jan. 1989 - Present - U.S. Environmental Protection Agency, Washington, DC - Special Assistant to the Administrator

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Phi Beta Kappa 1959

Ford Foundation Metropolitan Region Fellowship 1959-63

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
(See Attached Resume)		

Qualifications: State fully your qualifications to serve in the position to which you have been named.

I have been engaged in various aspects of environmental policy continuously since 1965. This has included work in the government, in academia, and in non-profit organizations. Among my activities were being the first budget examiner in OMB for environmental programs and publishing the first major book on the politics of environmental policy (The Politics of Pollution, 1970). I co-authored the reorganization plan that created EPA in 1970 and drafted the administration bill that became the Toxic Substances Control Act. I was the first chairman of the EPA Administrator's Toxic Substances Advisory Committee and served on the Executive Committee of the EPA Science Advisory Board for a number of years.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I have already severed all connections with the Conservation Foundation.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I left the Council on Environmental Quality after three years because of a desire to resume doing research.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

Pension funds from The Conservation Foundation now amount to approximately $99,000.

Pension funds in TIAA-CREF now amount to $141,678

3. Are any assets pledged? (Add schedule).

No.

4. Are you currently a party to any legal action?

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

Not to my knowledge.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

The Conservation Foundation was a recipient of federal contract funds.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I shall recuse myself from any decisions relating to the award of funds of any type to The Conservation Foundation.

5. **Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.**

See attached "U.S. Environmental Protection Agency Guidance on Ethics and Conflicts of Interest."

Political affiliation and activities: **List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.**

None.

Published writings: **List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)**

See attached resume.

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

   Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

   No.

AFFIDAVIT

J. Clarence Davies) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 8th day of July, 1989

Andrew Stum

Notary Public

ANDREW D. STUM
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 1, 1990

J. CLARENCE DAVIES

RESPONSE TO QUESTION SUBMITTED BY SENATOR BURDICK

Q. Your Office is involved with risk assessment, a difficult concept to communicate. As an example, let me ask you -- suppose you were trying to explain a health risk to the City Fathers of Grafton, North Dakota, whose population is about 5,000. How would you communicate to them, specifically, that an excess cancer risk was one in a million?

A. Literally speaking, one in a million excess cancer risk means that any citizen exposed to that particular environmental threat continuously over the course of a lifetime has a one in a million chance of contracting cancer. For a city of 5,000 like Grafton, this means that the City Fathers should know that there is a one in two hundred chance that someone in the city will contract cancer during their lifetime from this environmental source. It is important to realize that the probability would be much lower in the likely event that not everyone in the community is continuously exposed.

While this is not a terribly large risk, especially compared to many other everyday problems a person normally confronts, it still makes sense to try to minimize the risk even further by reducing public exposure to the source of risk. If, for instance, the risk is associated with a superfund site in Grafton, I would advise city residents to keep children away from it and to avoid drinking water from nearby private wells. Needless to say, if eliminating the risk altogether is financially practical, that should be done.

Please note: EPA also uses "one in a million risk" to summarize a calculation based on the total population in the United States. Hence, one in a million might also mean that, in the U.S., about 250 people are likely to contract cancer from that environment source.

As you may know, the Office of Policy, Planning and Evaluation sponsors research in risk communication. I have included one of OPPE's publications in this area.

July 31, 1989

**Answer by Mr. Timothy Atkeson to Question
Submitted by Senator Burdick**

Q. The United States and Canada are each other's largest trading partners. Canada is expected to export large and growing amounts of electricity to the United States over the next ten years. Coal-fired electric power plants in the United States are required to have and use scrubbers. Canadian electric utilities do not have scrubbers nor are scrubbers required. Canadian utilities plan to build coal-fired electric power plants without scrubbers. When it comes to electricity trade and environmental protection, do you think a "level playing field" between Canada and the United States is important? How do we get Canada to compete on a "level playing field"?

A. The "level playing field" is an important issue. The Administration's Clean Air Act proposal contributes to such a level playing field. Specifically, on the issue of acid rain, Canada is implementing a strong program to control sulfur dioxide, reducing actual 1980 emissions by at least 35 percent, and capping future emissions growth at that level. The Administration's proposal will reduce sulfur dioxide somewhat more than this, but at a later date, 2000; it will also hold emissions at that level. How each country will achieve these reduction goals will be different, and should reflect what is more cost-effective for each country to do. We understand that the Canadians are considering the possibility of using scrubbers in some cases. In discussions with Canada on air pollution, we will continue to raise these concerns with our Canadian counterparts, because I believe a level playing field is important to advancing our bilateral relationship and protecting our shared environment.

NOMINATIONS TO POSITIONS AT THE ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, OCTOBER 18, 1989

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:09 a.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senators Burdick, Warner, Lieberman, Jeffords, Baucus, and Chafee.

Also present: Senators Lugar and McConnell.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. The Committee on Environment and Public Works is meeting this morning to hear E. Donald Elliott, the President's nominee to be General Counsel of the Environmental Protection Agency, and Ms. LaJuana Wilcher, nominated to be EPA's Assistant Administrator for Water.

The position of General Counsel at the EPA is of utmost importance. It is the job of the counsel and the counsel's staff to advise the Administrator and EPA's program staff regarding matters of legal interpretation.

It is no secret that Congress has been critical of EPA's interpretations of various statutes in this committee's jurisdiction. I am pleased to say that the General Counsel designate has already demonstrated his desire to implement the law as it has been written. I specifically refer to Mr. Elliott's position regarding superfund's cleanup standards.

In March 1987, several of my congressional colleagues and I wrote to the then Administrator insisting that he implement the cleanup provisions to be enacted. Instead he demurred.

Recently Mr. Elliott wrote his interpretation of that provision. His interpretation is far more consistent with my own. I commend him for that, and for his intent to already practice to counsel regularly with the Congress.

Mr. Elliott, I will look forward to your testimony with great interest.

I am also pleased to welcome Ms. Wilcher, who is nominated to be Assistant Administrator for Water. The Office of Water implements the vital programs authorized in the Clean Water Act and the Safe Drinking Water Act. Effective cooperation of these programs is essential.

In order to protect the quality of our rivers, lakes, wetlands, and coastal waters, I look forward to hearing Ms. Wilcher's views on the many challenges we face in protecting water quality.

I'd like to call on my colleague, Senator Lugar, to make an introduction.

STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM THE STATE OF INDIANA

Senator **Lugar**. Thank you very much.

Mr. Chairman and members of the committee, it is my pleasure this morning to introduce E. Donald Elliott, appearing before you as the Administration's nominee for General Counsel of EPA.

Don Elliott is the son of Don and Mary Jane Elliott of Evansville, Indiana, who are here with us in the hearing today, along with a substantial number of members of the nominee's family. They are my constituents, and I am grateful to see them and to see their support of the nominee.

Don graduated from Harrison High School in Evansville in 1966, attended Yale University and Yale Law School. After graduating from Yale University in 1970 with exceptional distinction in English literature and Yale Law School in 1974, he served as law clerk to two distinguished justices, Circuit Judge David Bazelon and District Judge Gerhard Gesell. He then joined the Washington, D.C., law firm of Leva, Hawes, Symington, Martin & Oppenheimer, where he practiced law from 1976 to 1980.

Since 1981 he has served on the faculty of Yale Law School, from which he is now on leave.

Mr. Elliott has an excellent legal background for the key post of General Counsel of EPA—especially both as a practicing lawyer and as a law professor of environmental law. He also has an interest in such broad subjects as administrative and Constitutional law.

Most important of all, in my judgment, Don Elliott has that optimism, patience, and dedication to hard thinking which are essential for public service in this complex age.

Mr. William Cattrell, President of the Environmental Law Institute, summed it up well when he referred to Mr. Elliott as, "A recognized authority on environmental law with an excellent reputation in the field. He is expected to bring a lot of energy and brightness to the EPA."

With Don Elliott's Indiana background and expertise in environmental law, I'm sure he will be a valued advisor to Mr. William Reilly on broad policy issues such as acid rain, which affect both the northeastern and midwestern regions of our country.

Our nation should be proud of its environmental laws. Don Elliott will be a key figure in their enhanced enforcement.

Thank you for the opportunity to make this introduction.

Senator **Burdick**. Senator Warner.

Senator **Warner**. Thank you, Mr. Chairman. Perhaps we should invite our other colleagues to make their remarks. I would be happy to comment on the nominee. I'd like to express my appreciation to our colleagues for joining us today—particularly Senator Cook.

Senator McConnell. Thank you, Senator Warner.

Mr. Chairman, I am here on behalf of a Kentuckian friend of longstanding, and so is our former colleague, Senator Cook. I'd like first to call on Marlow for his observations about LaJuana Wilcher, and then I will sort of be the cleanup hitter.

Senator Cook.

STATEMENT OF HON. MARLOW W. COOK, FORMER U.S. SENATOR FROM THE STATE OF KENTUCKY

Mr. Cook. Thank you, Senator McConnell.

Mr. Chairman and members of the committee, I first met LaJuana Wilcher when she was 19 years old at Western Kentucky University. I think you would really call LaJuana Wilcher one of those dedicated people to our government.

She went to law school. She had a very active trial and appellate practice in Bowling Green, Kentucky. She came to Washington to align herself with the Environmental Protection Agency. She has been involved in the environmental field for a number of years. She came to our law firm, and I am delighted and proud to say that I was the moving force in making LaJuana Wilcher a partner in our firm, and that's pretty tough in that arena—and particularly the period of time that LaJuana had successfully practiced law.

She decided to get back into the environmental field, Mr. Chairman, and leave us. She is going to be sorely missed— tremendously so. I don't really believe that the President could have found a finer individual to nominate for Assistant Administrator for Water. She is delightfully dedicated, works her fool head off, and you're going to get your money's worth with LaJuana Wilcher as a member of the environmental team.

I am pleased to be here to say she is a distinguished and remarkable young lady, and we haven't heard anywhere near enough of what we are going to hear from LaJuana Wilcher now and in the future.

Senator Burdick. Thank you.

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator McConnell. Thank you, Marlow.

Let me just say, Mr. Chairman, that I, too, have known LaJuana for quite some time—probably 8 or 10 years—and have watched her grow and development as a lawyer and as someone genuinely interested in the outdoors, personally, she is dedicated to participating in outdoor environmental activities. That is carried over into her field of interest, as well.

She has served at EPA in the past in a couple of different capacities prior to going into private practice in this community.

We are going to submit for the record her complete biography, but let me say that you have here in LaJuana Wilcher a dedicated environmentalist, an outstanding lawyer, a fine Kentuckian, and I think she will be a credit not only to EPA but to the Bush Administration.

I recommend her highly and without qualification to this committee, and I hope she will be speedily approved.

Thank you for the opportunity to be here.

[The biography referred to follows:]

LaJuana S. Wilcher—Biographical Information

LaJuana S. Wilcher is Program Advisor to Environmental Protection Agency Administrator Bill Reilly on water issues while awaiting U.S. Senate confirmation to become Assistant Administrator for Water.

Ms. Wilcher brings to EPA an extensive background in environmental issues. Most recently, she has been a partner in the Washington D.C. law firm of Bishop, Cook, Purcell and Reynolds, where she specialized in environmental litigation, legal counseling and regulatory interpretation on water, air, hazardous waste and resource recovery issues.

Prior to entering the private sector in 1986, Ms. Wilcher served as Special Assistant to the General Counsel and Assistant to the Deputy Administrator at EPA Headquarters. In these capacities, Ms. Wilcher advised and consulted with senior EPA officials on a broad range of Agency policy and management issues, including regional coordination, budget and personnel matters, congressional relations and interagency coordination. She participated with the Deputy Administrator in management and planning sessions and represented him in a number of key EPA activities.

As Special Assistant to the General Counsel Ms. Wilcher served as the coordinator for EPA's pilot project on regulatory negotiation. She was also responsible for filing administrative actions and negotiating settlements involving violations of the Toxic Substances Control Act (TSCA) concerning EPA's polychlorinated biphenyl (PCB) regulations. In addition, Ms. Wilcher served as Acting Deputy Regional Counsel, Region, IX, (San Francisco), from June to September, 1984.

From February 1983 to November 1983, Ms. Wilcher served as Special Assistant to the General Counsel at the U.S. Department of Agriculture. She represented USDA in negotiations, testimony monitoring and clearance, briefings and other activities concerning immigration reform legislation and agricultural labor issues.

Prior to her federal experience, Ms. Wilcher was a litigation attorney with the law firm of Reynolds, Catron and Johnston in her hometown of Bowling Green, Kentucky. She launched her environmental career in Kentucky, during the summers 1974–1978, as a Naturalist/Interpreter at Mammoth Cave National Park.

Ms. Wilcher graduated magna cum laude in biology at Western Kentucky University, and received her Juris Doctorate from Salmon P. Chase College of Law at Northern Kentucky University in 1980.

Senator **Burdick**. Senator Lieberman.

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator **Lieberman**. Thank you, Mr. Chairman.

I want to join in the welcome to Ms. Wilcher and particularly to Don Elliott. Though Senator Lugar's presence indicates he is first and foremost a Hoosier, we consider him at least partially a Nutmegger from Connecticut—not a nut, but a Nutmegger.

He has been a student at Yale and a professor at the law school, as you know. And while this is not his greatest attribute for this job, he is a neighbor of mine in New Haven. Our children are friends. I can testify with great confidence not only to his ability but to his civility and his decency as a person.

If I may say more generally, I think that this is another outstanding appointment to EPA by the President. This committee obviously writes the environmental laws and then we rely on EPA to enforce them. The role of the General Counsel is critical to our confidence that the intent of Congress will be honored by the agency.

Don's experience is wide, as Senator Lugar has indicated in the opening statement. He has taught courses at Yale in environmental law which have really trained a generation of students to go on and be activists in this field. He has also written widely and thoughtfully on subjects that are of importance to the environment.

So, in my opinion, this is a first rate appointment in every way. I think we are going to have an excellent relationship with Don. We obviously may not always agree, but I'm sure that we will always have confidence that his opinions are forthright and thoughtful.

I think it is just another excellent addition to the first-rate team that Bill Reilly is putting together at the EPA. I welcome you.

Senator **Burdick**. Mr. Jeffords.

OPENING STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator **Jeffords**. I also want to welcome both of the nominees. I have been deeply impressed, having had the opportunity to interview both, with their ability and capacity. I think it testifies very well to the President and Bill Reilly's desire to really make EPA work. I am enthusiastic about working with you both.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator **Warner**. Mr. Chairman, I would just like to add a few words.

We thank you, Senator Cook. You are a legend in this institution. While you may be pursuing other endeavors far away from the Senate of the United States, we hope you will return on occasion.

As to the two nominees, I join my colleagues in saying what a challenge you have before you. I think if I were your age and full of vitality, I would like to be a member of Reilly's Rangers as you go across the United States to try and answer the many questions and meet the challenges for America to clean itself up. It is an exciting challenge with a marvelous team of individuals assembled by the President and Administrator Reilly.

[Senator Warner's written statement follows:]

Opening Statement of Hon. John W. Warner, U.S. Senator From the Commonwealth of Virginia

Thank you Mr. Chairman. I appreciate your holding this hearing today to hear testimony from the President's nominees for Assistant Administrator for Water and General Counsel of the Environmental Protection Agency.

I want to welcome Ms. LuJuana Wilcher and Mr. E. Donald Elliott to this hearing today. As I have told each EPA nominee that has come before this committee before you, including Administrator Reilly, you are part of one of the most important teams this administration has assembled. Upon your confirmation, you will be dealing with the vital issues of environmental protection—issues that will have an impact on many future generations to come. I am confident that, with both of your extensive backgrounds in environmental matters, you are well prepared for that task.

I look forward to working with you on these issues and hearing your testimony today.

Senator **Burdick**. We call on the first nominee, Mr. Elliott.

STATEMENT OF E. DONALD ELLIOTT, NOMINATED TO BE ASSISTANT ADMINISTRATOR (GENERAL COUNSEL), ENVIRONMENTAL PROTECTION AGENCY

Mr. ELLIOTT. Thank you, Mr. Chairman and distinguished members of the committee.

As a native of Indiana and a long-time resident of Connecticut, it is a great honor for me and for my wife Mary Ellen Savage, who is sitting behind me, to be appearing before you as the nominee of the President and the choice of Administrator Bill Reilly for this very challenging job.

As someone who has made environmental law a central focus of his professional life for the past 15 years, I find it a great challenge to follow in the footsteps of many of the great environmental lawyers that we have had at EPA.

I think it is also a very exciting time to be at EPA. We are entering the second generation of environmental protection. We have many new challenges facing us. Although the techniques that we have applied during the first generation have been successful in many ways, it comes as no news to the Committee and the staff that there are many new challenges that are facing us in a number of areas, some of which I have tried to address in my prepared statement.

Under the leadership of President Bush, Bill Reilly, Deputy Administrator Hank Habicht, members of this Committee, and your colleagues in the Congress, the government of the United States and EPA are taking a leadership role in addressing many of the environmental problems that we face in this country and around the world. It is very exciting to me to be part of the team of Reilly's Rangers. I think that Senator Warner has come up with a term that may stick.

I agree with what Senator Lieberman said and what the Chairman said. The General Counsel of EPA has a special function to see that the laws, as written and intended by the Congress, are enforced by the Agency. And I certainly intend to do my best to do that. In many ways the General Counsel of EPA is a quasi-judicial officer, advising the Agency and the Administrator as to the limits of the discretion that has been conferred on them by the Congress.

At EPA, generally we don't function on authority that is inherent, but rather authority that has been given to us by the Congress. I think the General Counsel has a special responsibility to see to it that we stay within the ambit of that discretion and follow the intentions of the Congress.

I certainly intend—and I know that Bill Reilly and the President intend—that we work very closely with the Congress and with the staff.

Thank you very much. I will be glad to answer any questions.

I'd like to ask your consent to make my prepared statement a part of the record.

Senator BURDICK. Thank you.

Senator Chafee is at a meeting at the White House. He would like to be here, and will be back as soon as possible.

In a recent memorandum you described your position regarding the clean up standard section of the superfund statute. In essence you said that maximum containment level goals are the basis for superfund cleanups. You suggested that waivers provided in the law should be used if the cleanup standard should not be achieved.

Please elaborate your position on this matter and tell the committee whether we can expect to see it become part of the superfund national contingency plan.

Mr. **Elliott**. Mr. Chairman, with all due respect, it is my opinion that it is not I that has said that the maximum contaminant level goals should be the cleanup standard. I believe it is very clear that the Congress has said in section 121 of the Superfund Act that the maximum contaminant level goals established under the Safe Drinking Water Act shall be the standards for cleanup. I'll read the language:

> Such remedial action shall require a level or standard of control which at least attains maximum contaminant level goals where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

I believe that represents a clear, conscious policy decision by the Congress that the maximum contaminant level goals shall be the cleanup standards at superfund sites except where EPA does one of two things: either we make a determination under the waivers that have been provided to us, or we make a determination that such goals or criteria are not "relevant and appropriate" under the circumstances of the release or threatened release.

It is my view that when the Congress has spoken clearly and without delegating discretion to the Agency that we have a responsibility to abide by those decisions, whether we agree with them or not.

Senator **Burdick**. Do you know of any matters which you may not have already disclosed which might place you in any conflict of interest if you are confirmed in this position?

Mr. **Elliott**. No, sir, I do not.

Senator **Burdick**. Are you prepared, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Mr. **Elliott**. Yes, I am.

Senator **Burdick**. Senator Lieberman.

Senator **Lieberman**. Thank you, Mr. Chairman.

Don, as you know, members of this committee, including myself, have been concerned over the last half year about some of the scientific advisory panels at EPA and the potential for perceived or real conflicts of interest because of simultaneous work on the panels and consulting for people in the industry regulated. I wanted to ask you whether EPA is reevaluating its regulations concerning those conflicts of interest.

Mr. **Elliott**. Yes, sir, we certainly are. I would like to commend Senator Lieberman and the Congress for bringing to our attention a potential real or perceived problem in this area. It has been my view that the scientific credibility of the EPA is one of the great national resources. Anything that detracts from the public perception that our scientific judgments are credible would be most unfortunate.

As Bill Reilly said in his confirmation hearing, the very first thing he mentioned was that our decisions had to be based on a respect for science. I think that the questions that have arisen in this area are ones that the Agency very much needs to address.

We have some difficulty in promulgating formal regulations that deal with conflicts of interest and disclosure, because under the Ethics in Government Act, the government-wide regulations that are issued under that Act supercede the conflicting regulations of any individual agency. But, nonetheless, we are considering what authority the Administrator may have as a matter of the internal management of the Agency. I have been working closely with Linda Fisher, the Assistant Administrator for the Office of Pesticides and Toxics, to try to come up with a way to deal with this problem which will rely primarily on disclosures so that the public and Members of the Congress can know exactly what the facts are.

There has been a report, with which I am sure you are familiar, by the Inspector General that reports that over time only about half of the members of the Science Advisory Panel have done any consulting whatsoever. Those who have done consulting have not done a type or magnitude that would reasonably be viewed as impugning their credibility.

I think the unfortunate thing, though, is that under the present circumstances, the public, the Members of this Committee and the other members of the Science Advisory Board are not given an opportunity to see exactly what the circumstances are and, therefore, there is an understandable cloud or concern in this area. We hope to be addressing that. It certainly will be my recommendation to Administrator Reilly that we do address that, and address it very aggressively.

Senator LIEBERMAN. I appreciate your interest and your response.

Let me ask two specific questions.

Have you reached a point where you have made a judgment about whether there should be a complete ban on consulting by members of the Scientific Advisory Boards while they are on the boards?

Mr. ELLIOTT. We have not made any final decisions in this area. It would be my personal opinion that an absolute bar on consulting of any type would be too broad. But, at the same time, I think a somewhat more narrow restriction on outside consulting by members of the Scientific Advisory Boards while they are serving at EPA is appropriate. How to draft that and how broadly it should be framed is something that we continue to work on.

Senator LIEBERMAN. I look forward to seeing that.

The second question is whether you are dealing in this with a mechanism for assuring that the conflict of interest regulations are being observed once they are promulgated.

Mr. ELLIOTT. Yes. We regard the issue of disclosure that you and I have been discussing as separate but related to the existing criminal, statutory, and regulatory system for dealing with true conflicts of interests or appearances of conflict of interest in sections 208 and 209 of title 18, the Federal Criminal Code.

In the Office of General Counsel, the deputy General Counsel is the agency's designated ethics official, and so we believe that the Office of General Counsel has a particular responsibility to make sure that the members not only of the agency, but those who serve as temporary employees on the science advisory boards are very familiar with exactly what the rules are. I think I made it a personal issue that no member of the Science Advisory Board should ever be able to say in the future they didn't know. We're addressing that by reviewing the materials that we distribute to them and having regular briefings for them as to exactly what the roles are.

When we get around to the second level of disclosure we will make sure that there is a mechanism through the permanent secretariat of these boards to see to it that the policies are, in fact, implemented.

Senator **LIEBERMAN**. Thank you. Let me just ask you one final line of questioning on another subject.

EPA over the years has had a real problem in meeting the deadlines that Congress has established for regulation. One of the things that has happened, as you well know, is that public interest groups and other interested parties have gone to court and compelled EPA to take action, and sometimes I think that has put the agency in a position of having its priorities decided for it rather than deciding; in other words, the courts have forced it to act.

I know that you are probably familiar with this, but last year a solo practitioner from Tennessee went to court and forced action by EPA on the noise regulations and a lot of effort on those regulations which probably most people at EPA and probably in Congress, as important as noise is, would have said it is not the most important priority. So this is an important role that you will have and do have as General Counsel, and I wanted to ask for your thoughts. Is Congress setting unrealistic deadlines? What are your priorities going to be in this area? What are the most important regulations that you'd like to see dealt with in the coming years, rather than reacting to court orders?

Mr. **ELLIOTT**. Senator, I think I agree with you that this is a very serious issue and problem that we at the agency, working together with the Congress, need to deal with. It is something that has been documented in the academic literature. I'd recommend to all of you Shep Melnick's excellent book, Regulation in the Courts, which focuses on the Clean Air Act. It concludes that deadline suits have, for many years, been a major factor in reallocating the agency's priorities.

I think it is not so much that individual deadlines viewed individually are unrealistic. I think it is more that over time we have accumulated so many statutory requirements that in gross it is very difficult for either the Congress or the agency to be setting priorities. When everything is an absolute priority, nothing is an absolute priority. And that may be the point that we are approaching after years and years and years.

We have, in the General Counsel's office, put together a list of what we understand to be the major problems that we are working on and we contemplate working on over the next year or two and how those fit together with the much larger set of deadlines that are on the books.

I think we do have a problem of these individual lawyers who are bringing lawsuits against us in part for the financial fees that are involved, reordering the agency's priorities. I think that we need to work with the Congress to review that situation and see what can be done about it.

One anecdote is that as we began to discuss this with the staff, I have been at the agency for about three months now as a consultant, and in that time I have seen essentially nothing coming through the agency that was not under a court-ordered or statutory deadline. So I think that the exception has really become the rule in that area.

One final point, and that is: what happens when we are found guilty to have violated a deadline? One thing that happens is that it puts the Administrator in a position of being found guilty publicly of violating the law, which now makes him extremely unhappy and I think brings the agency into disrepute with the public. And then what happens is an individual district judge some place around the country puts us on a reasonable schedule. Well, no matter how good the judiciary is, that individual judge and that individual case may not really have a good overview of all the other things that the agency needs to be working on. And I'm not sure that I know what the answer is; but I do think that there has to be a better way for us to recognize Congress' priorities and say we hear you loud and clear but, nonetheless, get a reasonable schedule for some of these events.

Senator **Lieberman**. I would really look forward—and I'm sure other members of the committee would—to working with you on this one. Let me invite this, if it is possible working together with the Administrator, as you put this list together I would be interested in having the members of the committee see the list and to have you prioritize it and to see what your sense of priorities within the agency is, and maybe we can try to work together to make sure that we support those priorities.

Mr. **Elliott**. May I just make one further comment on that? I have spoken to the Deputy Administrator about that, and he, more than the General Counsel's office, is really the one that is in a position to do what you have discussed. But I think he has agreed that we do need to set up a better management system for identifying what our priorities are and prioritizing them and making sure we are on top of them. He has put together a working group consisting of my office; the Office of Policy, Planning, and Evaluation; and the Deputy Administrator's office to try to establish that type of list that will identify what we are dealing with in terms of our priorities and what the order and the realistic expectations are.

Senator **Lieberman**. Thank you.

Thank you, Mr. Chairman.

Senator **Burdick**. Senator Jeffords.

Senator **Jeffords**. I would defer to Senator Chafee at this time.

Senator **Chafee**. Thank you very much.

Senator **Baucus**. In that event, I have a statement I'd like to put in the record please. Thank you very much.

Senator **Burdick**. That will be received without objection.

[Senator Baucus' statement follows:]

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Good morning ladies and gentlemen. I want to welcome Mr. Elliott and Ms. Wilcher to the Committee.

I am pleased that the President has selected two very solid candidates for the positions of EPA General Counsel and Assistant Administrator for Water. Both Mr. Elliott and Ms. Wilcher have substantial experience in environmental policy and knowledge of the specific subjects for which they will be responsible.

I am especially interested in hearing Ms. Wilcher's views on the best way to approach the many problems associated with protecting water quality. My home State of Montana is fortunate in that our surface and groundwaters are still very clean. Given the water quality problems that exist in other parts of the country, however, it is clear that we will need top-notch programs to protect this importance resource.

My Subcommittee on Environemmental Protection held an oversight hearing on implementation of the Clean Water Act earlier this year. While the EPA implementation of the 1986 amendments has been generally good, we need to redouble our efforts in some key areas such as nonpoint pollution control and correction of toxic hot spots.

In addition, we need to assure that programs for protecting surface water, drinking water, marine water, wetlands, and groundwater are well coordinated and operating in an effective and mutually supportive manner. If confirmed, Ms. Wilcher will be responsible for these programs and we will rely on her for their effective implementation.

Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. And I have a statement, too, Mr. Chairman, that I'd like to submit for the record.

Thank you, Senator Jeffords.

[Senator Chafee's statement follows:]

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Mr. Chairman, slowly but surely we are getting Bill Reilly's team in place. Your willingness to move quickly on these nominees once we have received their papers is appreciated by all of us.

This morning we will hear from the nominees to be EPA's general counsel and the Assistant Administrator for Water. Both Don Elliott and Lujuana Wilcher have been acting as consultants to the Agency for several weeks and, based on their performances during that time, I believe they have demonstrated that they have the ability and the desire to get the job done.

Mr. Elliott, the move from the quiet, civilized halls of academia to the rough and tumble halls of EPA must be quite an adjustment. As general counsel, you will have more than your fair share of tough, controversial decisions. The laws we enact are rarely paradigms of clarity and this makes your job that much more difficult.

Nevertheless, we can help you even after we have passed the laws that you are grappling with. It is hard to understand why so few of your predecessors sought the counsel of this committee on difficult questions of statutory interpretation. The members of this committee and our staffs were in the trenches when the laws were written. We are a tremendous source of information and guidance and I urge you to tap into that source and keep the lines of communication open.

Ms. Wilcher, you have a big job ahead of you. I know because I helped design it. The Water Quality Act of 1987 and the Safe Drinking Water Act Amendments of 1986 are still in the early stages of implementation.

It's a full plate. And one of the concerns I have is there may not be sufficient resources at EPA and out with the States to get the job done. The budget problems of the country have prevented us from increasing appropriations for the water programs. In fact, they have been less than the authorized levels.

The one bright spot is on nonpoint source pollution where the Appropriations Conference Committee decided yesterday on a grant of $40 million for next year. Those are the first dollars we've had to control nonpoint pollution. So that's a start. But I know you share my concern about resources and I look forward to working with you on ways that we might solve that problem. We may need to tap new resources for this program through permit fees or effluent charges or increased rates for water supply and disposal.

Mr. Chairman, with the completion of today's hearing, this committee will have reviewed and confirmed in timely fashion a number of nominees for key positions at EPA. You are to be commended for moving these nominations through the process in such an expeditious fashion, and I want to express my personal gratitude for his efforts.

At the same time, I am concerned that the committee has not yet scheduled a hearing on the nomination of Mr. James Strock for the position of Assistant Administrator for Enforcement and Compliance Monitoring. This is a very important post at EPA, and I believe we should move with dispactch to act on the nomination in the same fashion as we have acted on the others.

It is my understanding that Senator Pryor's office has raised certain questions relating to the Strock nomination, but those questions merely highlight the need for a hearing so that we can clear the air and move forward. Therefore, I would hope that we could set the hearing on Mr. Strock's nomination at the earliest opportunity.

Senator **Jeffords**. I would be happy to proceed with a question now if I may, Mr. Chairman.

First of all, I have been very impressed with your answers and with our interview. I would like to bring to your attention, though, a little real world problem in the superfund area.

There is a little town of Springfield, Vermont, which used to be the machine tool center of the United States in years gone by. It has since lost most of its jobs and most of its businesses, but it is stuck with a real serious superfund problem.

The recommended solution is to pre-treat the waste and then dispose of it in the waste treatment plant. Unfortunately, the town has to vote to accept that system. Our problem is convincing the town people to accept the guidelines which are presently quite lacking in this area and that, if they do so, they are going to end up with a situation which is going to create more problems than perhaps it solves. There appears to be little specific numeric guidelines to find the exact extent to which the superfund material must be pre-treated in order to assure that the waste treatment plant can accept it.

I understand that you are developing guidance documents of these kinds of discharges to treatment plants, and I wonder if you could give me an idea of when those guidelines could be forthcoming so that we can give some assurances to the voters of that town that they are going to be adequately protected.

Mr. **Elliott**. We are very close to being able to come out publicly with both the RCRA corrective action rules, which have been over at OMB for some time now, and the revision to the national contingency plan in the superfund area. I think both of those would bear on those problems.

I think that this really illustrates the problem that Senator Lieberman and I were talking about. Before I came to the agency, when I talked to people around the country one of the major things that many people mentioned to me was the need for clear RCRA corrective action standards that would allow people to engage in voluntary cleanups or know what the targets are at superfund sites. And yet, because of the many other things that were required to deal with as a result of deadlines, litigation, and other things, I have not been able to give that the level of attention that I anticipated I would want to give it when I was trying to figure out what things would be important to me.

As far as a specific anticipated date, I don't have that off the top of my head, but I certainly would be glad to submit something to you in which I would give you what our best current estimate is as to when those two rules will be out publicly.

Senator **Jeffords**. I would appreciate that. Thank you very much. It is a critical problem.

I appreciate your efforts across the board and look forward to working with you.

Thank you, Mr. Chairman.

Senator **Burdick**. I understand your strong supporters are here today. Would you care to introduce your wife and children?

Mr. **Elliott**. I certainly would. My wife, Mary Ellen Savage, is sitting right behind me. Behind her are my parents, Mr. and Mrs. Donald Elliott of Evansville, Indiana. Next to them are my two nephews, Robbie and David Drebus. Behind them is my sister, Jane Drebus, and her husband, Bill Drebus, and their daughter, Donna Drebus. Our two children, Eve and Ian, are up in Connecticut in school today.

Senator **Burdick**. It is good to have your family here.

Mr. **Elliott**. Thank you very much.

Senator **Burdick**. Do you have anything more you wanted to offer?

Mr. **Elliott**. No, Mr. Chairman.

Senator **Burdick**. Thank you very much.

[Mr. Elliott's written statement, résumé, and responses to a committee questionnaire and additional questions from Senator Chafee follow:]

STATEMENT BY
E. DONALD ELLIOTT
EPA GENERAL COUNSEL-DESIGNATE
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
OCTOBER 18, 1989

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE: It is a great honor for me personally to appear before you today as the nominee of President Bush and EPA Administrator William Reilly for the position of General Counsel of the Environmental Protection Agency.

For the past 15 years, environmental law has been a central focus of my professional life. As a law clerk, a practicing attorney, a law professor and a legal consultant, I have been personally involved in, or followed closely, the field of environmental law. The first twenty years of environmental law will go down in history as one of the most ambitious, and in many ways successful,[1] efforts ever to use law as an instrument for positive social change. But despite all the progress that we have made, the environmental problems facing us and the world today as we enter the second generation of environmental protection are as staggering as any that we as a species have ever faced -- global warming and the greenhouse effect, acid rain and ozone pollution in our cities, radon and indoor air pollution in our homes, our disappearing wetlands, the crisis in public confidence over hazardous waste disposal and pesticide residues in food, and overarching them all, the need to develop a worldwide approach to development that is sustainable and consistent with the ecology of our planet.

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[1] See Commoner, Failure of the Environmental Effort, 18 ELR 10195 (June, 1988).

A recent article describes our era as the "end of nature,"[2] but what is really coming to an end is not nature, but humankind's previous understanding of nature as limitless and independent of what we do. Knowledge and events today force us to acknowledge that we are at once one with, and also stewards over, nature. We as a species must develop the wisdom and the means to manage the future of our planet's resources. It is no longer enough to install the best technological systems of pollution control on our cars and our factories. We must generate the information and create the incentives to adapt modern industrial culture to be more consistent with the laws of nature. This is a large task and we still have a long way to go. But under the leadership of President Bush, Bill Reilly, Hank Habicht and the members of this Committee and your colleagues in the Congress, the United States has assumed a leadership role in this effort.

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[2] McKibben, The End of Nature, THE NEW YORKER 47 (Sept. 11, 1989).

Bill Reilly has enunciated four principles to guide us in meeting the challenges ahead:

1.) Pollution prevention.

2.) International leadership.

3.) A renewed commitment to ecology and natural resource conservation.

4.) Getting better environmental results from EPA's efforts, especially EPA's enforcement efforts.

I share Bill's commitments to these goals, and if I am confirmed, I will work hard to play a role in bringing them to fruition.

For an environmental lawyer, it is both humbling and exhilarating to be considered for the position of General Counsel of the EPA. One follows in the footsteps of some great environmental lawyers at EPA who exemplify the highest standards of the legal profession. They have established a very high standard, which I will try to live up to.

In the three months that I have been at the Agency as a consultant, I have found the career staff of EPA to be an outstanding group of highly-motivated professionals. In particular, the staff of the Office of General Counsel is an elite group of exceptional lawyers who are dedicated to serving the public interest under sometimes difficult circumstances at great personal cost to themselves. In my opinion, they, like their colleagues in the Lands and Natural Resources Division at the Department of Justice, exemplify a tradition of public service by the legal profession that is sometimes regrettably overlooked today. It is both a high honor, and a great personal challenge, to be asked to lead them. And it is also a great honor to be asked to join the team of outstanding Presidential appointees that Bill Reilly has assembled at EPA.

When Bill Reilly was before this Committee last January for his confirmation hearing, he made two special commitments: respect for science and respect for law. When Deputy Administrator Hank Habicht testified before this committee last May, he elaborated: "First and foremost, ... the Agency must constantly demonstrate the will and commitment faithfully to implement and enforce the laws passed by the Congress." I regard the General Counsel's Office as having a special responsibility to see that EPA enforces the environmental laws as written and intended by the Congress. If confirmed, I will work assiduously with Bill and Hank -- and you and your staffs -- to see that EPA lives up to these commitments. While we may not always agree, we have a shared obligation to make sure that the lines of communication are always open. In their wisdom, the Framers of our Constitution established a system of government that can move decisively if, but only if, the Executive branch and the Congress reach consensus on wise policy. The nature of the challenges facing our country and the world in the environmental area demand that we make every effort to reach the consensus that will enable us to act decisively.

Mr. Chairman, I want to thank you for giving me this opportunity to appear before you, and I will be pleased to answer any questions that you or the other members of the Committee may have.

Thank you.

RESUME

E. DONALD ELLIOTT

BIOGRAPHICAL

81 McKinley Ave. New Haven, CT 06515 (203) 387-4279 or -4280 Fax (203) 432-2539	Born April 4, 1948 Married. Two children.

PROFESSIONAL

Professor of Law (Associate Professor) Yale Law School 127 Wall St. New Haven, Connecticut 06520 (203) 432-4833	April, 1984 - present (Jan. 1981 - Apr. 1984)
Visiting Professor of Law Georgetown Univ. Law Center	July, 1986 - July, 1987
Visiting Professor of Law University of Chicago	Jan. - June, 1985

Teaches Torts, Environmental Law, Constitutional Law, Toxic Chemicals, Administrative Law, Legislative and Administrative Process, Energy and Natural Resources Law, Property, Complex Civil Litigation, Procedure.

University Fellow, Resources for the Future; Associate, Georgetown University Institute for Health Policy Analysis; Founder and Faculty Advisor, Yale Environmental Litigation Program; Joint Appointment, Institution for Social and Policy Studies, 1982-; Board of Advisors, Gruter Institute for Law and Behavioral Research. 1986- ; Regulation Book Review Editor, Journal of Policy Analysis and Management, 1984 - 1985.

EXPERIENCE

Associate Attorney Leva, Hawes, Symington, Martin & Oppenheimer Washington, D.C.	Oct., 1976-Oct., 1980

Private practice of law with emphasis on environmental law, and complex litigation involving international, insurance and construction contracts; D.C. Circuit Judicial Conference Committee on Pro Se and Pro Bono matters; volunteer attorney, Environmental Defense Fund and Civil Liberties Union of the National Capitol Area.

Law Clerk to Judge David L. Bazelon U.S. Court of Appeals for the District of Columbia Circuit Washington, D.C. 20001	Aug., 1975-Sept., 1976

(rev June 21, 1989)

Law Clerk to Judge Gerhard A. Gesell U. S. District Court Washington, D.C. 20001	July, 1974-July, 1975

EDUCATION

Yale Law School	J.D., June, 1974.
Yale Graduate School English Literature Carnegie Teaching Fellow	Sept. 1970-June, 1971.
Yale College, B.A., *summa cum laude* English Literature	June, 1970

PUBLICATIONS

Air Pollution "Rights," *The New York Times*, Sept. 11, 1982 (with Bruce Ackerman).

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WORK IN PROGRESS

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Pfizer Distinguished Lecture in Tort Law, Rutgers Law School, November 29-30, 1989.

Why Punitive Damages Don't Deter Corporate Misconduct Effectively, University of Alabama Law Review Symposium on Punitive Damages, April 14-15, 1989.

SYMPOSIA AND PRESENTATIONS

A Comment on Clean Coal/Dirty Air, Institution for Social and Policy Studies, May 13, 1981.

The Politics of Cancer: The Role of the Judiciary, Center for Health Studies, December 11, 1981.

Toward a Theory of Statutory Evolution (with B. Ackerman), Institution for Social and Policy Studies Seminar on Evolutionary Models and Metaphors, April 8, 1982.

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A Comment on McGarity's Media Quality, Technology and the Utilitarian Ideal, Conference on Health and Safety Regulation of the Chemical Industry, Duke University, September 3, 1982.

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A Comment on Shapiro, Administrative Discretion - The Next Stage, Yale Law Journal Symposium on The Legacy of the New Deal, February 13, 1983.

Toward a Theory of Statutory Evolution: The Creation of EPA, Yale Law School Faculty Workshop, April 6, 1983.

Alternatives to Judicial Review of Scientific and Technical Issues, National Science Foundation Workshop on Administrative Law and Political Economy, Columbia University, November 4, 1983.

Testimony Concerning the Legislative Veto Before the Subcommittee on the Constitution, Committee on the Judiciary, United States Senate, March 2, 1984.

"The Role of the American Legal Profession in Facilitating International Business," Central Connecticut State University Summer Business Seminar, July 17, 1984.

Comment on Robinson's "Probabilistic Causation and Compensation for Tortious Risk," Conference on Critical Issues in Tort Law Reform, Yale Law School, September 21-22, 1984.

"Toward A Theory of Statutory Evolution: The Federalization of Environmental Law" (with Bruce Ackerman & John Millian), Conference on Public and Private Ordering, Journal of Law, Economics and Organization, October 19-20, 1984.

"What Do We Wish From the System?," Georgetown University Center for Health Policy Analysis Conference on Compensation and Causation, February 20, 1985.

First Annual Duke Law Journal Lecture, "Constitutional Conventions and the Deficit," April 4, 1985.

Reporter and delivered lead paper, "Managerial Judging and the Evolution of Procedure," National Conference on Litigation Management, October 4-5, 1985 (jointly sponsored by the American Bar Association Litigation Section, the Center for Public Resources and the Yale Law School Civil Liability Program).

Comment, "Administrative Law and the Constitution under the Burger Court," Hofstra University conference on the Supreme Court under the Leadership of Chief Justice Burger, November 7, 1985.

"The Scope and Content of a Basic Course in Environmental Law," American Association of Law Schools workshop for teachers of environmental law, March 7, 1986.

Testimony before the Senate Commerce Committee concerning the toxic tort provisions of S. 1999 (Danforth Product Liability Bill), March 11, 1986.

"Uses and Abuses of Judicial Management," Conference for Metropolitan District Chief Judges, March 25, 1986.

Adapting the Constitution to the 21st Century (panel discussion with Lloyd Cutler, and Judge Robert Bork), Georgetown University Law Center, April 4, 1987.

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Issues in Constitutional Reform (panel discussion with Norman Ornstein, James Sundquist and Hendrik Hertzberg), Association for Public Policy Analysis and Management Research Conference, October 30, 1987.

Of Chemophobia, Hybrid Compensation Systems and Risk as a Compensable Injury, University of Houston Law Center National

Conference on Managing Liabilities from Hazardous Waste, November 12, 1987.

What's Wrong With Our Constitutional Law Process, Georgetown University Law Center "After the Bicentennial" Conference, November 14, 1987.

Hybrid Compensation Systems, HALT Inc. Conference on Alternative Compensation Systems, Washington, D.C., December 4, 1987.

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Panel Discussion, Better Use of Science and Better Handling of Causation in the Courts, Aspen Institute, March 24-26, 1988.

Paper, "Toward Incentive-Based Procedure: Three Approaches for Regulating Scientific Evidence," Connecticut Bar Foundation, Aetna, Yale Law School Civil Liability Program Conference "Civil Procedure Reform: Advancing the Dialogue," April 8-9, 1988 (to be published in Boston University Law Review (June, 1989).

Paper, Incentive-Based Procedure, Federal Judicial Center, Washington, D.C., June 16, 1988.

Panel Discussion, Policy Issues in Toxic Torts, Developments in Toxic Tort Strategies Seminar, New York, June 22-23, 1988.

Paper, Incentive-Based Procedure, Law and Economics Workshop, Georgetown University Law Center, September 22, 1988.

Discussion, The Future of Compensation Systems for Hazardous Waste, Resources for the Future, Washington, D.C., September 22, 1988.

Paper, Keeping the Faith: A Critique of the Role of the Federal Courts in Separation of Powers Cases (Boston College 4th Annual O'Neill Symposium in American Politics, October 21-22, 1988) (to be published in George Washington Law Review).

Paper, The Unintended Consequences of Legal Rules, or, Why the Common Law Process Doesn't Work As Advertised, Rockefeller Institute-Dartmouth College Conference on "Serotonin, Social Behavior and the Law," Hanover, New Hampshire, November 4-5, 1988.

"Fishing from the Perspective of the Fish: An Empirical Study of Judicial Review of Administrative Action from the Petitioner's Perspective," American Association of Law Schools Administrative Law Section Panel Discussion (with Profs. Peter Strauss and Cass Sunstein) "Does Close Judicial Scrutiny of Administrative Action Produce Net Benefits," New Orleans, January 6, 1989 (to be published in Duke Law Journal.)

"Teaching Law and Biology: The Yale Experience," Gruter Institute Workshop, "Law and Biology: Interdisciplinary Collaboration Towards Inclusion of Biological Knowledge in the Law," San Francisco, January 20, 1989.

"The Future of Toxic Tort Litigation," ABA Litigation Section Environmental Litigation Committee Mid-Winter Meeting, Keystone, Colorado, February 11, 1989.

"Corporate Challenges from Global Warming and Acid Rain Legislation," Westchester-Fairfield Corporate Counsels' Association, February 27, 1989.

Reporter, National Workshop on Improving Procedures for Scientific Evidence in Toxic Tort Cases: A Discussion Among Scientists, Judges and Lawyers, Sponsored by Department of Epidemiology, Johns Hopkins School of Hygiene & Public Health and Georgetown University Law Center, Washington, D.C., March 17-18, 1989.

"Are Punitive Damages a Relic?," Manhattan Institute Conference, Crime and Punishment in Business Law, New York, May 8, 1989.

Panel Discussion, "The Future of Environmental Law," Environmental Law Institute, Washington, D.C., May 16, 1989.

Visiting Lecturer, University of Zurich (Switzerland), Seminar "Recht und Ethologie" (Law and Ethology), May 19-20, 1989.

Paper, "Trust in American Law," Reimers Stiftung/Gruter Institute Conference "Ethology and Law: Competition and Trust in German and American Law," Bad Homburg (Fed. Rep. Germany), May 22-24, 1989.

Lecture, Recht im Ethologischen Sicht (Law in Enthological Perspective) University of Frankfurt (Fed. Rep. Germany), May 26, 1989.

Faculty Member, ALI-ABA Environmental Litigation Course, Boulder, CO, June 26-30, 1989.

OTHER PROFESSIONAL ACTIVITIES

Advisor to the Federal Courts Study Commmittee.

Consultant, Carnegie Commission on Science, Technology and Government.

Special Master, Instant Air Freight Co. v. C.F. Air Freight, Inc. et al., C.A. No. 89-1660 (U.S.Dist.Ct. N.J.)(Judge Sarokin).

1985 - ; Special Litigation Counsel, Corporate Environmental Programs, General Electric Company.

1988 - ; Consultant, G. D. Searle & Co. - litigation strategy

1988 - ; Consultant, Ohio Edison Co. - Acid Rain legislation

1988 - ; Consultant, Connecticut Medical Society - Malpractice reform.

1987 - ; Consultant, Mass tort reform, Aetna Insurance Co.

1981-1987, Consultant to Swidler & Berlin (Washington, D.C. law firm specializing in environmental and energy law).

1984-1985, Consultant to Overseas Private Investment Corp. (U.S. Government agency which facilitates international trade by insuring against political risks).

1985 - present, Vice-chair, American Bar Association Administrative Law Section Committee on Government Organization and Separation of Powers.

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Elliott (Last) Edwin (First) Donald Jr. (Middle)

Position to which nominated: General Counsel, Environmental Protection Agency

Date of Nomination: Sept. 27, 1989

Date of birth: April 4, 1948 (Day) (Month) (Year)

Place of birth: Chicago, Illinois

Marital status: Married

Full name of spouse: Mary Ellen Savage

Name and ages of children:

Eve Christina Savage Elliott — Age: 5 years

Ian Donald Savage Elliott — Age: 3 years

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Yale College	9/66 - 6/70	B.A.	June, 1970
Yale Law School	9/71 - 6/74	J.D.	June, 1974

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Professor of Law, Yale Law School, New Haven, CT April, 1984 - present

Associate Professor of Law, Yale Law School, New Haven, CT Jan., 1981-1984

Associate Attorney, Leva, Hawes, Symington, Martin & Oppenheimer (law firm) Washington, D.C. 1976-1980

Law Clerk, Circuit Judge David Bazelon, Washington, D.C. 1975-76

Law Clerk, District Judge Gerhard Gesell, Washington, D.C. 1974-75

Employment record—Continued

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

National Merit Scholar, Yale National Scholar, Garland Fellowship, Carnegie Fellowship, Phi Beta Kappa, *summa cum laude*, Honors With Exceptional Distinction in English Literature, Listed in *Who's Who* and *Who's Who in American Law*, University Fellow, Resources for the Future, First Annual Duke Law Journal Lecturer, Pfizer Distinguished Lecturer in Tort Law at Rutgers University Law School.

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Bar Association	Vice-Chair, Government Organization & Separation of Powers Comm., Admin. Law Section	1984-present
Administrative Conference of the United States	Consultant	1987-present

Qualifications: **State fully your qualifications to serve in the position to which you have been named.**

I have 13 years of experience in environmental law, both as a practicing attorney and consultant and as an academic, dealing primarily with issues of air pollution, toxics, hazardous waste and administrative law.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No. I will be on an unpaid leave of absence from Yale Law School for the first two years of my government service.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

My current plan is to return to teaching, either at Yale or another law school.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not applicable.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

Not applicable.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None, other than a small (under $1,000) account receivable for services as a court-appointed special master.

3. Are any assets pledged? (Add schedule)

None, other than mortgage on personal residence (appox. $100,000).

4. Are you currently a party to any legal action?

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not please explain the circumstances.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

No present investments, obligations, liabilities or other relationships (other than leave of absence from Yale). Past relationships with clients and recusals are addressed in the attached letter.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None. I was employed during 1984-85 as a consultant by the Overseas Private Investment Corporation. This work was not related to the area of environmental law.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

See attached letter. I have agreed to recuse myself from matters that might appear to constitute a conflict of interest.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

See attached letter.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

Republican.

I served as an adviser on environmental law to the 1988 Bush campaign and on the drafting of the 1988 Republican platform on environmental issues. Campaigner Member, Republican National Committee, 1984 - present; Charter Member, Republican Senatorial Task Force; Elected Delegate, Indiana Republican State Convention, 1970.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

See attached list of publications.

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

See attached list of significant litigation experience.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

Edwin Donald Elliott Jr.) ss. being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Edwin Donald Elliott Jr.

Subscribed and sworn before me this 1st day of October, 1989

~~Notary Public~~
JONATHAN J. EINHORN
CONN. SUPERIOR COURT
JUSTICE OF THE PEACE

Edwin Donald Elliott Jr.

Publications Relating to Environmental Law

Let Towns Make Their Own Hard Choices; A Way to See that Every Town Takes its Share of Facilities for the Public Good, The Hartford Courant, March 5, 1989, p. D-1, col 1.

Elliott, The Future of Toxic Torts: Of Chemophobia, Risk as a Compensable Injury and Hybrid Compensation Systems, 25 U. HOUSTON. L. REV. 781 (July, 1988).

Goal Analysis vs. Institutional Analysis of Toxic Compensation Systems, 73 Georgetown Law Journal 1357 (Aug., 1985).

Toward a Theory of Statutory Evolution: The Federalization of Environmental Law (with Bruce Ackerman & John Millian), 1 Journal of Law, Economics & Organization 313 (1985).

Review of Regulation and the Courts: The Case of the Clean Air Act, by R. Shep Melnick, 23 Journal of Economic Literature 654 (June, 1985).

Case Note on the Nuclear Waste Decision [Balt. Gas & Elect. Co. v. Nat. Resources Defense Council, 103 S.Ct. 2246 (1983)], Supreme Court Preview.

Anthropologizing Environmentalism (review of Risk and Culture by Mary Douglas & Aaron Wildavsky), 92 Yale Law Journal 888 (1983).

Air Pollution "Rights," The New York Times, Sept. 11, 1982 (with Bruce Ackerman).

Speeches Relating to Environmental Law

"Corporate Challenges from Global Warming and Acid Rain Legislation," Westchester-Fairfield Corporate Counsels' Association, February 27, 1989.

"The Future of Toxic Tort Litigation," ABA Litigation Section Environmental Litigation Committee Mid-Winter Meeting, Keystone, Colorado, February 11, 1989.

Of Chemophobia, Hybrid Compensation Systems and Risk as a Compensable Injury, University of Houston Law Center National Conference on Managing Liabilities from Hazardous Waste, November 12, 1987.

"The Scope and Content of a Basic Course in Environmental Law," American Association of Law Schools workshop for teachers of environmental law, March 7, 1986.

"Toward A Theory of Statutory Evolution: The Federalization of Environmental Law" (with Bruce Ackerman & John Millian), Conference on Public and Private Ordering, Journal of Law, Economics and Organization, October 19-20, 1984.

Alternatives to Judicial Review of Scientific and Technical Issues, National Science Foundation Workshop on Administrative Law and Political Economy, Columbia University, November 4, 1983.

Toward a Theory of Statutory Evolution: The Creation of EPA, Yale Law School Faculty Workshop, April 6, 1983.

A Comment on McGarity's Media Quality, Technology and the Utilitarian Ideal, Conference on Health and Safety Regulation of the Chemical Industry, Duke University, September 3, 1982.

The Clean Air Act: An Unauthorized Biography, Connecticut Fund for the Environment Conference on Issues in Environmental Law, April 25, 1982.

A Comment on Clean Coal/Dirty Air, Institution for Social and Policy Studies, May 13, 1981.

Publications on Other Subjects.

The Dis-Integration of Administrative Law: A Comment on Shapiro, 92 Yale Law Journal 1523 (1983).

Holmes and Evolution: Legal Process as Artificial Intelligence, 13 Journal of Legal Studies 113-146 (1984).

INS v. Chadha: The Constitution, the Administrative Constitution and the Legislative Veto, 1983 Supreme Court Review 125-177.

Numerous book notes - vols. 2-5 Journal of Policy Analysis and Management (1984-1985).

Should Congress Overrule Chadha? 31 Yale Law Report 17 (Fall, 1984).

Casenote on Heckler v. Chaney (the lethal injection case), Preview of U.S. Supreme Court Cases 131, Dec. 7, 1984.

The Evolutionary Tradition in Jurisprudence, 85 Columbia Law Review 38 (1985).

Why Courts? Comment on Robinson, 14 Journal of Legal Studies 799 (Dec. 1985).

Constitutional Conventions and the Deficit, 1985 Duke Law Journal 1077.

Managerial Judging and the Evolution of Procedure, 53 University of Chicago Law Review 306 (1986).

Regulating the Deficit After Bowsher v. Synar, 4 Yale Journal on Regulation 317 (1987).

Torts With Multiple Causes Under U.S. Law, Yale Law School Civil Liability Program Working Paper No. 74; published in Germany in 138 Arbeiten zur Rechtsvergleichung 9 (Fenyves & Weyers ed., 1987).

Toward Incentive-Based Procedure: Three Approaches for Regulating Scientific Evidence, Yale Law School Civil Liability Program Working Paper No. 76 (March, 1988).

Review of Ellen Frankel Paul, Property Rights and Eminent Domain, ETHICS 873 (July, 1988).

Elliott, Why Our Separation of Powers Jurisprudence Is So Abysmal, 57 GEO. WASH. L. REV. 506 (1989).

Summary of Significant Litigation Experience

E. Donald Elliott

Special Litigation Counsel, Corporate Environmental Programs, General Electric Company (Jan. 1985 - June, 1989).
Responsible for litigation strategy and supervision of outside counsel in over 200 toxic tort cases involving asbestos, PCBs, chlorinated solvents, heavy metals and other hazardous wastes.

S.M.S. Leasing Inc. v. G.C. Services Corp., C.A. 83-3422 (U.S. Dist. D.C.).
Primary trial attorney in damage suit for fraud and breach of contract arising out of a $100 million procurement of computer equipment by the U.S. Internal Revenue Service. Successfully settled following discovery.

Ohio Power Co. v. EPA, 729 F.2d 1096 (6th Cir. 1984).
One of three attorneys in challenge to EPA's modeling procedures for establishing air pollution regulations for large powerplants. Primarily responsible for technical and administrative law aspects of the case.

Connecticut Fund for the Environment v. EPA, 696 F.2d 169 (2d Cir. 1982).
Primary attorney responsible for briefing and arguing challenge to EPA approval of "Btu bubble" amendment to Connecticut State Implementation Plan under the Clean Air Act.

U.S. Industries v. Blake Construction Co., 671 F.2d 539 (D.C.Cir. 1982).
One of two primary trial attorneys in six week jury trial. Verdict in excess of $9.6 million ($400,000 more than requested) is one of the largest private jury verdicts ever rendered in favor of a single plaintiff in the District of Columbia. The verdict was sustained on appeal, establishing significant precedent permitting use of expert testimony to support claims for lost profits and prejudgment "cost of funding."

Revere Copper & Brass Inc. v. Overseas Private Investment Corp, 628 F.2d 81(D.C.Cir. 1980), cert denied, 100 S.Ct. 2964 (1981).
One of three attorneys who successfully defended U.S. government agency against $64 million claim under expropriation insurance during two months of arbitration hearings and on appeal to U.S. District Court, U.S. Circuit Court of Appeals and US. Supreme Court. Solely responsible for briefing and trial of over $30 million of tax and accounting issues on which client prevailed.

Consumer Product Safety Commission v. Anaconda Corp. et al., 593 F.2d 1314 (D.C. Cir. 1979).
Representative to four firm steering committee which successfully defended aluminum wire companies against multi-billion dollar repair and replacement claim by federal government.

Environmental Defense Fund v. Costle, C.A. 79-1360 (D.D.C.)
Filed complaint on behalf of national environmental organization challenging EPA's failure to regulate asbestos in public schools. EPA reversed its position in response to the suit.

William White v. American District Telegraph Co,, C.A. 10368-76 (D.C. Super.)
Primary attorney responsible for defense of $1 million damage suit arising out of permanent injuries resulting from improper firearms training of security guard. Settled after extensive discovery for $17,000.

Anaconda Corp. v. Overseas Private Investment Corp., 4 Int'l Legal Mat.
One of three attorneys defending U.S. government agency in damage phase of $100 million claim under expropriation insurance. Settled after extensive arbitration proceedings.

Columbia Broadcasting System v. American Society of Composers, Authors, and Publishers, 400 F. Supp. 737 (S.D.N.Y. 1975), rev'd 562 F.2d 130 (1977), cert.denied, 450 U.S. 970.
Substantial contributor to brief in plaintiff's antitrust suit on behalf of CBS.

United States v. J.B. Williams Co., 498 F.2d 414 (2d Cir. 1974).
Substantial contributor to brief on behalf of the United States in appeal from false advertising proceeding against makers of Geritol.

OCT 18 1989

Senator John Chaffee
Ranking Minority Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Chaffee:

Please find enclosed my answers to the two follow-up questions posed at my October 18, 1989, confirmation hearing.

Sincerely,

ED Elliott

E. Donald Elliott

Enclosures

1. Q. Do you see your job as helping the Agency find a way to get the job done or is it to provide the legal opinion and let others worry about the environmental implications?

A. Neither of the two options you have identified is a fully satisfactory description of what I understand the various roles of the General Counsel to be. I see one role of the General Counsel to be to define the range of legally permissible options available to get the job done. However, I also view it as appropriate, where applicable, to advise that a proposed option, while within the range of options for which a respectable legal argument can be made, nonetheless presents an unacceptably high risk of reversal in court in our judgment. In addition, the General Counsel's Office works with the Department of Justice to defend the Agency in litigation, and when solicited to do so, provides policy advice to the Administrator, Deputy Administrator and program offices. In giving legal advice, the overriding purposes of the statutes should guide us.

2. Q. Many people at EPA see the General Counsel's Office as the office of "Dr. No," always coming up with reasons why this or that cannot be done. How do you plan to deal with this problem?

A. Under the two step framework established in Chevron v. NRDC, 467, U.S. 837 (1984), the Agency must first determine whether Congress has already made a policy decision on the issue before us. If so, the General Counsel must say "No. Congress has spoken." In the much larger area where Congress has delegated policy decisions to the Agency, our role is to facilitate, not frustrate the program offices in pursuing the goals that Congress has given them.

I hope to deal with the problem you identify (if indeed it is a problem) by distinguishing clearly between legal opinions regarding the limits of our statutory authority, and policy advice regarding how we recommend that EPA exercise discretion that Congress has given the Agency.

Senator **Burdick**. Ms. Wilcher, you are next. Please proceed.

STATEMENT OF LaJUANA WILCHER, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR WATER, ENVIRONMENTAL PROTECTION AGENCY

Ms. **Wilcher**. Thank you, Senator.

Mr. Chairman, in deference to your position, I will extend to you the privilege that has only been extended to one other person in my life, and that was my Grandfather Wilcher, who was a logger in the hills of Kentucky. Grandfather Wilcher never learned how to say my name, either, so he was the only person who has ever been permitted to call me by my middle name, Sue. If you would like to, sir——

Senator **Burdick**. Since you are a lawyer, it would be a very simple matter to go into District Court and get your name changed.

Ms. **Wilcher**. It would, indeed, but I have lived with that one for a while. Once I learned how to spell it, I decided I might as well keep it. But, sir, if you would like to call me by my middle name, Sue, please feel free to do so.

Before I begin, I would like to introduce my husband of two and a half months, Peter Gray, who is here with me today. He has been a tremendous support to me as I have been putting a lot of time in on a new job and learning the issues at the agency. He has been a most understanding new husband.

I do have some written comments that I would like to submit for the record and, if I may, I would briefly summarize that statement for you here today.

Senator **Burdick**. Your statement will be received, and you may summarize.

Ms. **Wilcher**. Thank you, sir.

Mr. Chairman and distinguished members of the Committee, I am honored to appear today as the President's nominee for Assistant Administrator for Water of the United States Environmental Protection Agency. I am especially pleased that Bill Reilly has asked me to serve in this position.

Since assuming leadership at EPA earlier this year, Bill Reilly has invigorated the agency and has provided a renewed sense of purpose and commitment to environmental protection throughout this country and throughout the world.

I would consider it a real honor to be able to bring the experiences that I have had professionally and personally to EPA to further the mission of environmental protection, and specifically the goals of the President and the Administrator. They have been very clear in stating those goals: pollution prevention; cooperation with Congress, State and local governments, environmental groups, and business; protection of important habitats and ecosystems—especially the sensitive aquatic and marine ecosystems; a high degree of international activity; an emphasis on science; and strong enforcement.

I would like to tell you today that I wholeheartedly share those priorities and would look forward to helping implement them in the Office of Water.

If I am confirmed, one of the top priorities would be pollution prevention. Bill Reilly has made it a cornerstone of Agency policy, and has established it as a driving force in our future regulatory decision making.

To a large extent, the Office of Water has already been a leader in pollution prevention by encouraging the re-use of sludge, by enforcing industrial pre-treatment requirements, by establishing a program to help municipalities remain in compliance at their publicly owned treatment works, and by encouraging the use of buffer strips to prevent sediments and pollutants from entering our surface waters.

But I want to do more. The Office of Water has an opportunity to do more in pollution prevention in a variety of areas that are of great importance to our nation's water quality. One area, of course, is the nonpoint source pollution. We would like to work to build public awareness of the problem. We would like to encourage State and local governments to target watershed management approaches. We would like to work to transfer technology and to conduct training workshops on nonpoint source management, whether it involves best management practices in our agricultural communities or controls on storm water runoff and combined sewer overflows in our urban areas.

It would be much easier to carry out our Safe Drinking Water Act requirements if we are able to control pollution up front. And if we are successful in protecting our groundwater from contamination and our surface waters from discharges, we could facilitate the very difficult and complex process involved in treating our water to ensure that it is safe and secure for human consumption.

Groundwater protection does deserve some special attention because it is technologically difficult and expensive to clean up contaminated groundwater. As I have learned in my years of doing cave exploration, there is another reason to protect groundwater. There are hidden rivers that flow underground through thousands of miles of passageways that provide a home for a very fragile ecosystem—that of animals that are troglobitic species, such as crayfish and other animals that spend their entire lives underground. I wonder in amazement every time I encounter one of these creatures in an underground cave exploration mission.

These animals represent only one—and, I might add, a relatively unknown—ecosystem that deserves protection. Other, much better known, ecosystems needing protection priorities, include our sensitive marine and aquatic ecosystems. In the Office of Water, I see our greatest opportunities in the areas of wetlands protection and coastal management. While these areas represent a challenge, I firmly believe we can protect and restore them to what they once were.

I also understand full well that central to EPA's efforts in moving forward in these and other areas is strong enforcement. We must have respect for and an added dedication to enforcement of the environmental laws that Congress has passed. The laws that the Office of Water enforces are vital to the health and safety of the citizens of the country, and I fully support their enforcement.

Our mission, of course, cannot be attained alone. There must be cooperation with interest groups, with the Congress, with State and municipal governments, and with industry if we are to achieve our goals. As I come back to EPA I am impressed with the increased level of cooperation and collaborative effort that I see among these groups as we work together on our common goals. I believe in order to succeed we need to keep that momentum and keep the public enthusiasm and support for environmental protection. To do that, we must be equitable, effective, and willing to listen.

Today there exists an unprecedented opportunity for cooperation. We must maintain the ability to communicate and to innovate while maintaining clear and consistent goals.

Last, but certainly not least, I would like to lead the Office of Water toward new management principals that focus on improving the quality of life for its people. As Bill Ruckelshaus said in 1973, we must show that we have a tremendous amount of respect for people's feelings, for their careers, and for their professions. We must trust and respect the people that we work with.

I believe that we also must share a vision, that in government we will be rewarded if we are creative and if we are innovative. I believe that we must throw off the cloak of our performance being "good enough for government work". We must excel, because we have too much at stake to suffer failure.

I believe we can succeed and I believe we will succeed with the help of the President, this Committee and the millions of Americans who are committed to protecting and restoring our nation's water.

Thank you very much. I would be happy to answer any questions that you or other members of the committee may have, sir.

Senator **Burdick**. Thank you.

Agriculture contributes to nonpoint pollution, and a number of States have developed innovative programs to reduce nonpoint pollution from agriculture. How big a part of the nonpoint pollution problem is agriculture?

Ms. **Wilcher**. Senator, in certain States—primarily our midwestern and rural States—it is a primary source of nonpoint source pollution, and that's why we need to be prepared to target those areas to work with farmers to develop the best management practices to reduce that pollution before it enters our waterways.

In other States, the more industrial States, we find that a great deal of our nonpoint source pollution comes from urban runoff. That's why EPA and other Federal agencies and the States must focus on both aspects of the problem and try to develop creative strategies to manage all types of nonpoint source pollution.

Senator **Burdick**. What are the other major sources of nonpoint sources?

Ms. **Wilcher**. Urban runoff, storm water runoff from the highways, and combined sewer overflows.

Senator **Burdick**. What are your ideas other than those you have just mentioned how to address the problem?

Ms. **Wilcher**. Well, the Office of Nonpoint Source Pollution in our Office of Water is one of our more creative offices, and I have been quite impressed with the people who are working there.

As you may know, most of the States have submitted plans for controlling nonpoint source pollution. Our initial thought would be to work closely with the States to see that the plans are acceptable, are approved, are implemented, and work closer with the other Federal Government agencies—especially the Department of Agriculture—to try to do everything we can to prevent the pollution before it enters our waters.

Senator **Burdick**. What should the role of the Department of Agriculture be in protecting ground water sources from nonpoint pollution?

Ms. **Wilcher**. Because it is such a large organization—more than ten times the size of the Environmental Protection Agency—the Department of Agriculture has a tremendous opportunity to encourage nonpoint source pollution controls in the field. Agriculture also, through the Soil Conservation Service, has field representatives in almost every county.

We have a cooperative effort now with the Soil Conservation Service where one employee is in each EPA regional office, and we believe that by utilizing the existing structure, Agriculture can make a significant difference in protecting our nation's waterways.

Senator **Burdick**. Lake water quality is a grown concern in my home State of North Dakota and many other States. One of the smaller and least noticed programs of the Water Office is the clean lakes program under authority of section 514 of the Clean Water Act. What is your view of the condition of the freshwater lakes throughout the country?

Ms. **Wilcher**. It is my recollection that about 20 percent of the freshwater lakes in our country are impaired. That means they have some pollution problems. We believe that the Clean Lakes Program which our office administers is an important part of helping communities address the causes of the pollution and developing strategies to clean up the lakes. We have had some real success stories in that program, and I believe that we'd like to encourage the program to go forward to the extent possible.

Senator **Burdick**. What can be done to improve and expand existing efforts to protect equality of these lakes?

Ms. **Wilcher**. Every year additional lakes are included in the Clean Lakes Program. We know now that of the 300 or so that originally have been included in the program, we have cleanup in about half.

We need to make sure that in each of those programs ongoing monitoring efforts are conducted so that we are able to measure our continued progress and make sure that we are maintaining the quality that we have achieved in those lakes.

Senator **Burdick**. Is there a need for water quality standards specifically designed for lakes rather than rivers or streams?

Ms. **Wilcher**. Senator, I've not really given any consideration to that. I'd like, if I could, to submit a response for the record for you on that one.

[The information referred to follows:]

Because lakes may have different hydrogeologic characteristics from rivers, the water quality standards program has sufficient flexibility and available tools to allow states to tailor their standards to address the special local circumstances of their lakes. In developing water quality standards, states may examine the particular spectrum of acquatic life that was used to develop the criteria. In some cases, the aquatic life present in lakes may differ so that the state may wish to set differing standards on this basis. In those cases, the state would modify the national criteria to reflect these difference. Such differences are appropriately considered in the process of a state developing site-specific water quality standards. EPA guidance discusses how such standards are developed.

Senator **Burdick**. Are you prepared, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Ms. **Wilcher**. Yes, sir.

Senator **Burdick**. Do you know of any matters which you may not have already disclosed which might place you in a conflict of interest if you are confirmed to this position?

Ms. **Wilcher**. I do not.

Senator **Burdick**. Anything else you want to say?

Ms. **Wilcher**. No, thank you.

Senator **Burdick**. Thank you.

Senator Lieberman.

Senator **Lieberman**. Thank you, Mr. Chairman.

Ms. Wilcher, I welcome you. I appreciate very much the tone and the substance of your opening statement, and would like to reflect back to you how important the office that you will be heading is to this committee and to the public.

There is a remarkable movement in this country of people toward the coasts because of our obvious attraction to the water. I think historically it was commercial, and I suppose there is still some of that—commercial and transportation. But today it also has a lot to do with recreation. Our desire for clean, pure, healthy, safe water is rising dramatically.

There is an irony here, obviously: the more of us who move toward the coast, the more pressure is put on the water by us. But the greater desire and public interest there is in cleaner water gives us all a real challenge. In my State that expresses itself particularly around the concern for Long Island Sound. I would bet that though we are affected by air pollution and toxic waste and a number of other environmental challenges and threats to the wetlands, if you asked people in the State what their most important environmental priority is and what they are most concerned about, I would guess that more people would say cleaning up Long Island Sound than anything else. That is indicative, I think, of people's yearning desire to be on the water and in the water and yearning to have it be clean.

This has been a real focus of this committee I have seen in the 10 months I have been on it. The majority leader has been very active in his concern and leadership on the question of coastal protection. I welcome, therefore, what I take to be in your opening statement a similar commitment to a real comprehensive approach to our Nation's coastal waterways.

Let me ask you specifically—when somebody new comes into an office sometimes there are rumors flying around. In my time here, I have been impressed with the Office of Marine and Estuarian Protection. Do you have any plans to restructure your office in a way that would limit the role of the Marine and Estuarian Protection program?

Ms. **Wilcher**. I do not, Senator. In fact, I would be looking for ways to strengthen that office. I, too, have been impressed with the work that they have done, and would hope to be able to enable them to do their job even better.

Senator **Lieberman**. That's a relief to hear. You will not be surprised to hear that I have some specific ideas about how you could strengthen it in relationship to Long Island Sound. I look forward to sharing those with you.

One more question that again relates to the Sound but relates to water quality nationally, and that is the whole wastewater treatment facility program.

Long before I was here, I knew that there has been a feeling on this committee that there was an agreement struck with the previous Administration that in return for limiting the scope of the wastewater treatment facility program that there would be a commitment for 10 years of funding at $2.4 billion. The Administration this year has come in with a recommendation for just half that. This is really central. Again, if I may be local, the estimates to clean up Long Island Sound are—the main problem with water in Long Island Sound is sewage and inadequate treatment. And this program really is at the heart of doing something about that. We have estimates that it would cost us $1 billion in Connecticut and $5 billion in New York to clean up the sewage plants that affect the quality of Long Island Sound.

There is a willingness, because of the importance of this problem, of people in Connecticut to put money up to do this, but not enough to pay it all. We really feel strongly that there has to be a Federal role in this partnership. I wanted to ask you whether you have any thoughts, or would you review the agency's commitment in this area and work with us to see what we can do to make it easier for the sewage treatment plants to be upgraded and the water kept clean.

Ms. **Wilcher**. I certainly would, Senator. That is a Federal problem and a State problem and a local problem. Working out the balance and the contributions of each of those branches of government so that we can have clean water is a very difficult job. The States, in recent years, have been taking a larger share of that responsibility. And we still know that Americans pay only about one half of one percent of their income for their water supply and water treatement—a third or a fourth of what they pay for electricity or telephone service.

I will do everything I can to work with the States and the municipalities to try to ensure that we can help them meet their obligations.

Senator **Lieberman**. Thank you for that answer, and thank you for your appearance, generally.

Ms. **Wilcher**. Thank you, sir.

Senator **Burdick**. Senator Jeffords.

Senator **Jeffords**. Thank you.

First of all, I would like to ask you the same question that I asked Don with respect to the treatment of superfund sites. I wonder if you have any comments on when we can anticipate some guidelines so we can reassure the voters of Springfield and other communities throughout the United States that what is being done will be adequate to protect their health.

Ms. **Wilcher**. Senator, I think the guidance document that you are referring to is looking at what type of hazardous wastes are or could be treated through the POTW system and what would effectively protect the American public if the wastes are treated in that fashion.

We are expecting some time around the end of fiscal year 1990 to have that guidance document out. That may seem like a long time, but because of the complex nature and the difficulty in determining the risk to human health of having any type of chemical go through the wastewater treatment facility, it does take some time. But near the end of fiscal year 1990 we are expecting to see that.

Senator **Jeffords**. I'm not sure when the vote is scheduled, but that's going to be very difficult for that community to make a decision which may mean millions of dollars to them as to which way they go if they don't know what is going to be required of them is going to be an adequate solution to the problem. I just wanted to make you aware of that.

Secondly, I want to talk a little bit about Lake Champlain. As I am sure you are familiar at least that the lake exists, you may also know that the United Nations has designated it as an international biosphere that deserves protection. It is kind of an orphan lake presently. It is the next-largest freshwater body outside of the Great Lakes in the United States, but it is not designated as a demonstration lake under the clean water program. We have beginning serious problems in pollution. Fish are becoming polluted—the lake trout in particular—with PCBs.

We need a little guidance as to where we should go to try to get some special attention to that very beautiful lake. I guess there are four programs we could look at, but at present we are not in any of them. We are not a demonstration project under the clean lakes program, and I don't know whether it is fair to ask you at this time if you could recommend what we could try to do, but I'd like to work with you on that because I think it is incredibly important that that very beautiful lake which is now threatened does not get itself in a position where we have to work backwards. It seems to me we have an opportunity to protect it now with some help, and I would appreciate any comments you might have on that. We may be back to you later for some guidance on which way to go.

Ms. **Wilcher**. Yes, sir. It is my understanding that while it may not have been on a statutorily designated list of lakes included in the Clean Lakes Program, that Program did contribute $200,000 last year to the two States involved—$100,000 to Vermont and $100,000 to New York—to help those States develop a plan that assesses the nature of the problem that exists at the lake. This is the first step in moving forward to do restoration. To the extent that we can, we would like to continue to work with you to protect that resource. I don't know what the fiscal year 1990 appropriations will be or whether they will include funds for that. There is a shortfall in funding to continue that plan. I would be happy to talk with you or your staff to see what we could do to help you on that.

Senator **Jeffords**. I appreciate that, and I'm sure Senator Moynihan joins me in my comments here. Also, we are in serious need of monitoring, and we do not seem to have the kind of data base that we ought to have to determine which direction the lake is going, and all those kinds of problems I look forward to working with you on.

In connection with that, I'd like to mention the problems with the nonpoint source program. We have worked very hard in Vermont and are well on our way to bringing the nonpoint source pollution—especially farms, etc.—under control. Unfortunately, New York has diverted most of its attention in the western direction I believe in those programs. I am hopeful that when it comes to splitting the money up among the States to assist us that you will consider how much we have done and that little States like Vermont won't get lost in the shuffle for the bigger problems as we try to preserve at least our side of the lake. I would hope you would be mindful of the need for the small States to get some protection in that regard.

I think that's all I have, Mr. Chairman.

Senator **Burdick**. Thank you.

This concludes the hearing. The record will be open for one week in case there are any further statements on the subject.

Thank you.

Ms. **Wilcher**. Thank you.

[Whereupon, at 11:09 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Ms. Wilcher's written statement, and responses to a committee questionnaire and additional questions from Senators Burdick, Reid, Chafee, and Jeffords follow:]

STATEMENT BY

LaJUANA S. WILCHER

ASSISTANT ADMINISTRATOR-DESIGNATE

OFFICE OF WATER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

OCTOBER 18, 1989

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THIS COMMITTEE. I AM HONORED TO APPEAR BEFORE YOU TODAY AS THE PRESIDENT'S NOMINEE FOR ASSISTANT ADMINISTRATOR FOR WATER AT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

I AM ESPECIALLY PLEASED TO HAVE BEEN ASKED BY BILL REILLY, ADMINISTRATOR OF EPA, TO SERVE IN THIS POSITION. SINCE ASSUMING LEADERSHIP OF EPA EARLIER THIS YEAR, BILL REILLY HAS INVIGORATED THIS AGENCY, PROVIDING A RENEWED SENSE OF PURPOSE AND COMMITMENT TO ENVIRONMENTAL PROTECTION IN THIS COUNTRY AND THROUGHOUT THE WORLD.

I AM HERE TODAY, IN PART, TO TELL YOU THAT I WHOLEHEARTEDLY SHARE THE ADMINISTRATOR'S AND THE PRESIDENT'S COMMITMENT TO PROTECT THIS EARTH AND ALL THAT INHABIT IT. THAT MISSION HAS DRIVEN ME, BEGINNING IN HIGH SCHOOL WHEN I DECIDED TO BECOME A NATURALIST -- THROUGH MY UNDERGRADUATE STUDIES IN BIOLOGY AND RECREATION -- AND DURING MY FIRST FEDERAL GOVERNMENT JOB AS A GS-4 SEASONAL NATURALIST AND GUIDE AT MAMMOTH CAVE NATIONAL PARK IN KENTUCKY.

WHEN I ATTENDED LAW SCHOOL IN THE LATE 1970'S, A NUMBER OF MY COLLEAGUES QUESTIONED MY STATED GOAL OF BECOMING AN ENVIRONMENTAL LAWYER. THEY BELIEVED THAT ENVIRONMENTAL LAW WAS MERELY THE CURRENT VOGUE. FOR THE SAKE OF ALL OF US ON THIS GLOBE, I AM DELIGHTED THAT ENVIRONMENTAL PROTECTION HAS BECOME AN ENDURING ETHIC.

AFTER I GRADUATED FROM LAW SCHOOL, I WAS INVOLVED IN AN ACTIVE TRIAL AND APPELLATE PRACTICE IN KENTUCKY. SOON THEREAFTER, I CAME TO WASHINGTON, D.C. TO WORK FOR A MAN WHOM MANY OF YOU KNOW -- JIM BARNES. AFTER WORKING BRIEFLY AT THE DEPARTMENT OF AGRICULTURE, I FOLLOWED JIM BARNES TO EPA IN 1983, WHERE I SERVED AS HIS ASSISTANT WHILE HE WAS BOTH GENERAL COUNSEL AND DEPUTY ADMINISTRATOR. DURING MY THREE YEARS AT EPA, I WAS INVOLVED IN MANY FACETS OF THE AGENCY'S ACTIVITIES -- REGIONAL COORDINATION, BUDGET AND PERSONNEL MATTERS, CONGRESSIONAL AND INTERAGENCY RELATIONS, AND A WIDE VARIETY OF EPA POLICY AND MANAGEMENT ISSUES.

MORE RECENTLY, I HAVE HAD THE OPPORTUNITY TO VIEW ENVIRONMENTAL LAWS AND POLICY FROM A DIFFERENT PERSPECTIVE - AS A PARTNER IN THE LAW FIRM OF BISHOP, COOK, PURCELL AND REYNOLDS HERE IN WASHINGTON. MY PRACTICE INVOLVED A BROAD RANGE OF ENVIRONMENTAL ISSUES - WATER, AIR, HAZARDOUS WASTE AND RESOURCE RECOVERY. THROUGH THIS EXPERIENCE I HAVE COME TO APPRECIATE THE BALANCE THAT MUST BE STRUCK TO ENSURE THAT THE REGULATORY REQUIREMENTS WE IMPOSE, PARTICULARLY UPON SMALL MUNICIPALITIES AND SMALL BUSINESSES, ARE ACHIEVABLE AND ENFORCEABLE.

I WOULD BE PLEASED TO BRING ALL OF THESE EXPERIENCES TO EPA TO FURTHER THE MISSION OF ENVIRONMENTAL PROTECTION, AND THE SPECIFIC ENVIRONMENTAL GOALS OF THE PRESIDENT AND THE ADMINISTRATOR. THEY HAVE MADE CLEAR THEIR ENVIRONMENTAL

PRIORITIES -- POLLUTION PREVENTION; COOPERATION WITH CONGRESS, STATE AND LOCAL GOVERNMENTS AND OTHER FEDERAL AGENCIES; PROTECTION OF OUR IMPORTANT HABITATS, ESPECIALLY SENSITIVE AQUATIC AND MARINE ECOSYSTEMS; A HIGHER DEGREE OF INTERNATIONAL ACTIVITY AND COORDINATION; AN EMPHASIS ON SCIENCE; AND STRONG ENFORCEMENT.

I SHARE THESE PRIORITIES, AND I AM EAGER TO ASSIST IN THEIR IMPLEMENTATION SHOULD I BE CONFIRMED. THIS IS A TIME OF TREMENDOUS OPPORTUNITY IN THE AREA OF ENVIRONMENTAL PROTECTION, AND ESPECIALLY IN THE OFFICE OF WATER. NEVER BEFORE HAS THE NEED BEEN SO GREAT, THE PUBLIC SO ATTUNED, AND THE GOVERNMENT SO COMMITTED TO EFFECTIVE ACTION.

IF I AM CONFIRMED, TOP PRIORITY WILL BE GIVEN TO DEVELOPING STRONG INCENTIVES FOR POLLUTION PREVENTION. BILL REILLY HAS MADE POLLUTION PREVENTION A CORNERSTONE OF AGENCY POLICY AND HAS CHALLENGED US TO MAKE POLLUTION PREVENTION A DRIVING FORCE BEHIND FUTURE REGULATORY DECISION-MAKING. I FIRMLY BELIEVE WE CAN BRING THE FULL WEIGHT OF AMERICAN INGENUITY TO BEAR ON POLLUTION PREVENTION STRATEGIES.

TO A LARGE EXTENT, THE OFFICE OF WATER HAS BEEN A LEADER IN POLLUTION PREVENTION THROUGH SUCH EFFORTS AS ENCOURAGING SLUDGE RE-USE, ENFORCING INDUSTRIAL PRETREATMENT RULES, ESTABLISHING A PROGRAM TO ASSURE CONTINUED COMPLIANCE OF MUNICIPAL TREATMENT

WORKS AND ENCOURAGING THE USE OF BUFFER STRIPS TO PREVENT SEDIMENTS AND POLLUTANTS FROM ENTERING OUR SURFACE WATERS. BUT I WANT TO EMPOWER THE OFFICE TO DO MORE. CENTRAL TO OUR POLLUTION PREVENTION STRATEGIES WILL BE ACTION ON NONPOINT SOURCE POLLUTION PREVENTION. THE PROBLEM OF NONPOINT SOURCE POLLUTION IS SIGNIFICANT -- AND EFFORTS TO CONTAIN IT ARE CRITICAL. EPA'S MOST RECENT WATER QUALITY INVENTORY REPORT TO CONGRESS REVEALED NONPOINT SOURCES AS THE DOMINANT CAUSE OF OUR NATION'S REMAINING SURFACE WATER POLLUTION.

THE OFFICE OF WATER, IN CONJUNCTION WITH OTHER EPA OFFICES, THE DEPARTMENT OF AGRICULTURE AND OTHER FEDERAL AGENCIES, WILL WORK TO BUILD PUBLIC AWARENESS OF THE PROBLEM OF NONPOINT SOURCE POLLUTION. WE WILL ENCOURAGE STATE AND LOCAL GOVERNMENTS TO ADOPT TARGETED WATERSHED MANAGEMENT APPROACHES. AND WE WILL WORK TO TRANSFER TECHNOLOGY AND CONDUCT TRAINING WORKSHOPS ON NONPOINT SOURCE MANAGEMENT -- WHETHER IT INVOLVES BEST MANAGEMENT PRACTICES IN OUR AGRICULTURAL COMMUNITIES OR STORMWATER RUNOFF AND COMBINED SEWER OVERFLOW CONTROLS IN OUR URBAN AREAS.

EFFECTIVE POLLUTION PREVENTION WILL ALSO MAKE IT EASIER TO CARRY OUT THE SAFE DRINKING WATER ACT. TO THE EXTENT WE ARE SUCCESSFUL IN PROTECTING OUR GROUNDWATER FROM CONTAMINATION AND REDUCING DISCHARGES INTO OUR SURFACE WATERS, WE WILL FACILITATE THE DIFFICULT AND COMPLEX PROCESS OF TESTING AND TREATING THE WATER WE DRINK TO ASSURE THAT IT IS SAFE AND SECURE.

GROUNDWATER PROTECTION DESERVES SPECIAL ATTENTION BECAUSE GROUNDWATER CLEANUP IS TECHNOLOGICALLY DIFFICULT AND EXPENSIVE. IN ADDITION, HIDDEN RIVERS OF GROUNDWATER FLOW UNSEEN THROUGH THOUSANDS OF MILES OF UNDERGROUND PASSAGEWAYS THAT ARE HOME FOR FRAGILE, HIDDEN ECOSYSTEMS OF CAVE DWELLING LIFE -- WHITE, EYELESS, TROGLOBITIC SPECIES OF FISH, CRAYFISH AND OTHER ANIMALS THAT SPEND THEIR ENTIRE LIVES IN THE BLACKNESS OF THEIR UNDERGROUND WORLD. WHEN I DISCOVER THESE CREATURES ON CAVE EXPLORATION MISSIONS, I CAN ONLY WONDER AT THEIR ADAPTATIONS TO UNDERGROUND SURVIVAL. THESE ANIMALS, THOUGH, REPRESENT ONLY ONE RELATIVELY UNKNOWN ECOSYSTEM THAT DESERVES PROTECTION.

PROTECTION OF AQUATIC AND MARINE ECOSYSTEMS AND NATURAL RESOURCE CONSERVATION WILL BE ANOTHER PRIORITY IF I AM CONFIRMED. WITHIN THE OFFICE OF WATER, I SEE THE GREATEST OPPORTUNITIES FOR APPLYING THIS ETHIC IN THE AREAS OF WETLANDS PROTECTION AND COASTAL MANAGEMENT. WITH RESPECT TO WETLANDS, I WILL BE ACTIVE TO DEVELOP THE MEANS TO CARRY OUT THE PRESIDENT'S COMMITMENT TO NO NET LOSS OF OUR WETLANDS. I DO NOT UNDERESTIMATE THE CHALLENGE WE HAVE TO CHART A PATH TO THAT GOAL, OR THE DEBATES AND CONFLICTS WE WILL ENCOUNTER ON THE WAY. BUT I SUPPORT THE GOAL AND FIRMLY BELIEVE WE CAN ACHIEVE IT.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Wilcher (Last) LaJuana (First) Sue (Middle)

Position to which nominated: Assistant Administrator for Water, EPA

Date of Nomination: 8 September 1989

Date of birth: 16 September 1954 (Day) (Month) (Year)

Place of birth: Danville, Kentucky

Marital status: Married

Full name of spouse: Peter Franklin Gray

Name and ages of children: NONE

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Western Kentucky University	1973-1977	BS	1977
Salmon P. Chase College of Law, Northern KY Univ.	1977-1979	JD	1980
University of Louisville Law School	Summer, 1978		
Western Kentucky University	Spring, 1982		

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

SEE ATTACHMENT

EMPLOYMENT RECORD

JULY 1989 - PRESENT	Policy Advisor to the Administrator, EPA, Washington, D.C. -- Review of Office of Water programs and policies, consult with and advise Administrator on same.
JULY 1988-JULY 1989	Partner, Bishop, Cook, Purcell and Reynolds, Washington, D.C. -- Performed legal work, specializing in environmental law and litigation, including Clean Water Act, Superfund and Clean Air Act matters.
JULY 1986-JULY 1988	Associate, Bishop, Cook, Purcell & Reynolds, Washington, D.C. -- Performed legal work, specializing in environmental law and litigation, including Clean Water Act, Superfund and Clean Air Act matters.
JANUARY 1985 - JULY 1986	Assistant to the Deputy Administrator, EPA, Washington, D.C. -- Advised and consulted with the Deputy Administrator and other EPA senior management officials on Agency policy and management issues.
NOVEMBER 1983 - JANUARY 1985	Special Assistant to the General Counsel, EPA, Washington, D.C. -- Worked with the General Counsel and Regional Counsels on Agency management, personnel and legal issues.
FEBRUARY 1983 - NOVEMBER 1983	Special Assistant to the General Counsel, USDA, Washington, D.C. -- Represented USDA on legislative issues relating to the pending Immigration Reform and Control Act. Consulted with the General Counsel on personnel and recruiting matters.
APRIL 1980 - FEBRUARY 1983	Trial Attorney, Reynolds, Catron & Johnston, Bowling Green, Kentucky -- Involved in general trial and appellate practice.
MARCH 1980 - APRIL 1980	Law Clerk, Caudill & Allen, Bowling Green, Kentucky. -- Assisted County Attorney with legal research and litigation.
MAY 1979-AUGUST 1979	Law Clerk, English, Lucas, Priest and Owsley, Bowling Green, Kentucky. -- Performed legal research, drafted appellate and trial briefs.
JANUARY 1978 - FEBRUARY 1980	Law Clerk, O'Hara, Ruberg, Osborne and Taylor, Covington, Kentucky. -- Performed legal research, drafted trial memoranda, assisted at trials.
Summers 1974-1978	Park Naturalist/Interpreter. U.S. National Park Service, Mammoth Cave, KY. -- Conducted nature walks, guided cave tours and presented slide presentations for visitors at Mammoth Cave.

Employment record—Continued

SEE ATTACHMENT

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Law School: Order of the Curia (Top 10% of Graduating Class); National Moot Court Team; Moot Court Board; Deans List; Book Award Environmental Law; Book Award Evidence; Outstanding Moot Court Board Member; Outstanding Young Women of America; Who's Who in American Colleges and Universities; Undergraduate; President's Scholar; Dean's List; Regent's Scholarship Recipient; Ogden Scholarship Recipient; Kentucky College Republican Vice-Chairman; Kentucky College Republican Woman of the Year.

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations

Organization	Office held (if any)	Dates
American Bar Association		1980 - Present
Kentucky Bar Association		1980 - Present
Kentucky Academy of Trial Attorneys		1981 - Present
Cave Research Foundation		1981 - Present
Fairfax Hunt		1989 - Present

Qualifications: State fully your qualifications to serve in the position to which you have been named.

My educational and professional background have given me the opportunity to develop the skills and qualifications necessary for being Assistant Administrator for Water. My undergraduate work in biology and associated sciences, combined with my legal training, provides me with a solid foundation for understanding the issues that we must address in the Office of Water (OW). My experience as a trial and appellate attorney enhanced my public speaking skills, and my environmental law practice enabled me to appreciate the procedural, technical and practical aspects of OW issues. From my earlier years of government service I gained experience in personnel and budget issues, Congressional relations, federal policy concerns and government coordination. Among my most important qualifications, however, is my longstanding commitment to the environment. That commitment, together with my other qualifications, will form a solid foundation for performing the job of Assistant Administrator.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I have severed business connections with my previous firm, Bishop, Cook, Purcell and Reynolds. I intend to continue participation in the firm's 401(a) plan as described in Part II, page 5 on the attached SF-276.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

NONE

3. Has anybody made a commitment to you for a job after you leave government?

NO

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

NO

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I departed USDA in November 1983 to work at EPA. I left the General Counsel's office of EPA in 1985 to work in the Deputy Administrator's Office. I left the Deputy Administrator's Office in 1986 to go to work at Bishop, Cook, Purcell & Reynolds.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

NONE

3. Are any assets pledged? (Add schedule).

NO

4. Are you currently a party to any legal action?

NO

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Federal income tax returns have been filed for each of the last 10 years, except for 1988. An extension application has been filed for 1988.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

NO

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

NONE, except for the potential appearance of a conflict involving former clients, as described more fully in Part II, pages 5 and 6 of the attached SF-278.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

In addition to my Federal Government service from 1983-1986, I represented clients in Clean Water Act and Superfund actions involving EPA permitting and enforcement matters. I also represented the Cave Research Foundation in discussions with the Department of the Interior and the Department of Agriculture concerning proposed regulations under the Cave Protection Act.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I intend to be recused in all specific matters that would be a potential conflict of interest or would appear to be a conflict of interest, based on recommendations from EPA's Ethics Office.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

I am seeking and will continue to seek the advice of Gerry Yamada, designated Agency Ethics Officer, to avoid actual and apparent conflicts of interest.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

I was involved in the Reagan-Bush Campaign at the local level in 1980. From 1983-1986 I was prohibited from most partisan political activity by the Hatch Act. I was selected an honorary delegate to the Republican National Convention in 1988, and participated in campaign activities for President Bush in the 1988 Presidential Election.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Notes of Participation on Negotiated Rulemaking Session, of Conference on Private Involvement in Public Decision-making Published by ABA, 1986

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

   YES

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

   NO

AFFIDAVIT

LaJuana S. Wilcher) ss, being duly sworn, hereby states that ~~he~~/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

LaJuana S. Wilcher

Subscribed and sworn before me this 6TH day of OCTOBER, 1989

Thomas J. White
Notary Public

THOMAS J. WHITE
NOTARY PUBLIC, D.C.
My Commission Expires January 14, 1991
[illegible]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 18 1989

OFFICE OF
WATER

Honorable Quentin N. Burdick
United States Senate
Washington, D.C. 20510

Dear Senator Burdick:

Enclosed is my response to the question you submitted during my confirmation hearing this morning before the Committee on Environment and Public Works. I believe this provides the information you requested. I also am submitting for consideration by the Committee the responses prepared to written questions submitted by other Senators and by your staff.

I appreciate the opportunity to appear before the Committee and to respond to your questions.

Sincerely,

LaJuana S. Wilcher

LaJuana S. Wilcher

Enclosures

QUESTION: Should we have different water quality standards for lakes than for rivers?

ANSWER: Because lakes may have different hydrogeologic characteristics from rivers, the water quality standards program has sufficient flexibility and available tools to allow states to tailor their standards to address the special local circumstances of their lakes. In developing water quality standards, states may examine the particular spectrum of aquatic life that was used to develop the criteria. In some cases, the aquatic life present in lakes may differ so that the state may wish to set differing standards on this basis. In those cases. the state would modify the national criteria to reflect these differences. Such differences are appropriately considered in the process of a state developing site-specific water quality standards. EPA guidance discusses how such standards are developed.

LAKE WATER QUALITY STANDARDS

QUESTIONS:

A. Is there a reason for water quality standards to be different for lakes, as opposed to rivers or oceans?

B. Should EPA develop different national water quality criteria for lakes or issue guidance to assist States in development of lake water quality standards?

ANSWERS:

A. Lakes may have different hydrogeologic characteristics from rivers and oceans which could justify different water quality standards. The factors that would make a lake unique are likely to be site-specific.

B. EPA should not develop different national water quality criteria for lakes because such criteria cannot accommodate the site-specific factors that would make a given lake unique. However, the water quality standards program has sufficient flexibility and available tools to allow states to tailor their standards to address the special local circumstances of their lakes. In developing water quality standards, States may examine the particular spectrum of aquatic life that was used to develop the criteria. In some cases, the aquatic life present in lakes may differ so that the State may wish to set differing standards on this basis. In those cases, the State would modify the national criteria to reflect these differences. Such differences are appropriately considered in the process of a State developing site-specific water quality standards. EPA guidance discusses how such standards can be developed.

Although EPA national water quality criteria are not tailored for lakes, the methodology is such that they should adequately protect all applicable water bodies. The criteria are based on either human health (fish and water consumption) or aquatic life considerations. Where the criteria are designed to protect aquatic life, they are based on tests of a spectrum of aquatic life, from small organisms to large fish. The range of organisms considered is sufficiently broad to represent the species in a wide range of types of waterbodies. Therefore, the difference in water quality standards resulting from site-specific modifications usually is not large.

Additional EPA guidance targeted explicitly to development of lake-specific water quality standards might be of value to some states. However, such guidance is not as high a priority for EPA as other water quality initiatives such as criteria for wetlands and near coastal waters or state development of toxic water quality standards.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 18 1989

OFFICE OF
WATER

Honorable Harry M. Reid
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

Enclosed is my response to the question you submitted as part of my confirmation hearing this morning before the Committee on Environment and Public Works. Because of the earthquake, we are unable to contact the Region IX office in San Francisco at this time to obtain the information you requested. We will however, be in contact with them as soon as possible, and then will provide a more detailed response to you.

I appreciate the opportunity to appear before the Committee and to respond to your question.

Sincerely,

LaJuana S. Wilcher

LaJuana S. Wilcher

Enclosure

QUESTION:

I have been working to address the water problems in Northern Nevada. One issue of serious concerns relates to the Stillwater Wildlife Refuge in Nevada, one of North America's most important inland staging areas for migratory birds. The wetlands -- once encompassing 24,000 acres -- has shrunk to less than 5,000 acres. Stillwater is now on the National Wildlife Federation's "endangered wildlife refuge list."

In an effort to restore the wetlands, there is an effort to transfer effluent from the cities of Reno and Sparks to Stillwater. We hope EPA may conduct a pilot project using effluent from the Fallon Neval Air Station to create an artificial wetlands. If this effort is successful, pumping effluent from Reno and Sparks may be a potential solution to the wetlands problem.

Can you tell me what needs to be done to get this pilot project underway?

ANSWER:

The funding of this pilot project is being handled by our Regional Office in San Francisco. We are unable to provide the status at this time. The Regional Office is closed due to the earthquake, and the Water Division Director has been called from his home to The Presidio to deal with the earthquake-related emergency matters. Once communications are re-established with the Regional Office, we will provide a full report on what needs to be done to get the project underway.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 18 1989

OFFICE OF
WATER

Honorable John H. Chafee
United States Senate
Washington, D.C. 20510

Dear Senator Chafee:

Enclosed are my responses to the questions you submitted as part of my confirmation hearing this morning before the Committee on Environment and Public Works. I believe this provides the information you requested.

I appreciate the opportunity to appear before the Committee and to respond to your questions.

Sincerely,

LaJuana S. Wilcher
LaJuana S. Wilcher

Enclosures

Question:

One of the most difficult problems we have had with the Clean Water Act is getting adequate resources for the States to carry on their part of the effort. In the past they relied on set-asides under the construction grants program and on small federal grants under section 106. But as the construction grants program is phased out, there will be a large gap in funding at the State level. Are you looking at that problem down at EPA? Are there other potential sources of revenue like permit fees or effluent charges that we should be considering for supporting State programs?

Answer:

We indeed are looking at the problem of States' resources to carry out their water programs. Without strong and adequately funded State programs, we will not be able to meet our national goals for clean water and safe drinking water. The State funding problem arises not only from the loss of set-asides under the Clean Water Act, but also from all the new activities States must carry out under the Clean Water Act and the Safe Drinking Water Act.

Much of the information EPA has gathered on this subject is derived from a State Funding Study initiated by the Office of Water in May of 1988, which, among other things, sought to quantify the State funding needs, and to examine potential sources of new revenues.

EPA and the States currently are considering alternative financing mechanisms such as permit fees, effluent charges, dedicated taxes, special management funds, and use and dedication of fine and penalty revenue as ways to meet State needs. They also are investigating other, nonmonetary ways to increase resources and reduce the amount of money needed through management and regulatory efficiencies, reduction of administrative burdens, technical assistance, and partnerships with third parties, other agencies, and the private sector.

QUESTION:

What does the President's "No Net Loss" Policy mean?

ANSWER:

The President has stated a goal of "no net loss" to preserve the nation's wetlands in several speeches and in his 1990 budget message to Congress. Many specific questions remain concerning both the definitional aspects of the goal and its practical implementation. The President charged the Domestic Policy Council with the task of establishing needed policies and procedures, including revision of the 1977 Executive Order on Wetlands Protection. An interagency task force is now addressing these matters. While it is too early to characterize the shape of the working group's final products, it is certainly clear that this is both a critical and complex challenge given the full scope of the federal government's many programs, ranging from land management, to financial assistance, to regulation.

EPA, in implementing its 404 (b)(1) guidelines, has taken the position that unavoidable wetland losses should be fully compensated, when practicable, in terms of both acreage and function. Such compensation may be obtained either through the restoration of degraded or former wetlands -- or through the construction of new wetlands if it is technologically probable that properly functioning new wetlands can be constructed. I am committed to working toward the adoption of this goal throughout federal government programs, and also toward encouraging states to adopt "no net loss" as a goal for their wetlands.

Q. How do you plan to encourage private landowners to protect wetlands and states to strengthen their wetland protection laws?

A. EPA has worked actively with States, and will continue to do so, in assisting them with the evaluation, design, establishment, and implementation of state-level programs for wetland protection. Our assistance has taken a variety of forms, from information transfer to technical and financial assistance. As one example, EPA issued this past year a guidance document on the use of water quality certification (pursuant to section 404) as a tool in protecting wetlands. That guidance has been well-received by States, and we believe that many are beginning to put it into practice. As part of the President's 1990 budget request, we have requested funds to establish a modest grant program to assist States in establishing programs and piloting various innovative approaches. EPA has no program for working directly with private landowners. We are working, however, with such agencies as the Soil Conservation Service and the Fish and Wildlife Service to capitalize on their significant field presence in bringing the wetland message to private landowners. We also are developing various public education and information tools to promote wider understanding of wetland values and programs to conserve them.

Q. Will the section 404 program provide adequate authority to achieve that goal?

A. The section 404 program alone does not provide adequate authority to achieve that goal for several important reasons. First, the section 404 program by its statutory terms simply does not regulate all of the forms of wetland loss and degradation. This program regulates only discharges of dredged or fill material which in aggregate are believed to account for perhaps as low as 20% (according to the Congressmal Office of Technology Assessment) of the wetland losses experienced in recent years. Many other causes of wetland loss, notably agricultural drainage and vegetation removal, are not regulatable under section 404. Second, many losses are unavoidable or even natural (for example, coastal erosion). Finally, many aspects of wetlands protection go beyond the types of activities normally expected of governments, especially at the federal level. Some examples include monitoring, management of pests and vegetative succession, water-level manipulation, and human intrusion. Success in many of these area requires the direct support and action of landowners and private organizations.

QUESTION: Why has EPA fallen behind the schedule set by the 1986 Safe Drinking Water Standards? What's the problem? Do you lack the scientific knowledge to produce the standards? Are there not enough people at EPA to write regulations? Is there too much political pressure to get a standard set?

In addition: What is holding up the lead-in-drinking water standard? When can you get the standard out?

ANSWER: The reasons EPA has fallen behind schedule in getting Safe Drinking Water Act standards out are several. EPA's actions on this issue to date, however, are not without some successes. By the statutory deadline, June, 1989, EPA completed setting 66% of the new standards (55 of 83) in either proposed or final form. What's more, EPA is far enough along in the regulatory process to be confident that all 83 standards, and perhaps standards for additional contaminants, will be on the books in final form by 1992.

Such successes have taken place within the context of tight resources and complex scientific information about these contaminants, their health effects, and suitable treatment technologies. Scientific rulemaking is, by nature, a painstaking and cautious exercise which is especially complicated in this case where there exists a dearth of unequivocal scientific information. Determining the health effects of many contaminants has been very difficult. And even when the best available data is accessible, which is the exception rather than the rule, the scientific issues and options which arise are often hard to reconcile among reputable technical experts. Not withstanding these difficulties, EPA has been working very hard to maintain the necessary momentum, and has the necessary expertise and manpower to get the job done.

The essential steps involved in setting drinking water standards complicate and lengthen the process. Each of the 83 contaminants require a five part standard setting process; an examination of current data, identification of lab analysis requirements, identification of health effects, prescription of appropriate treatment technologies, a description of health effects and the setting of monitoring requirements. Further, many proposed rules have stimulated extensive public comment - comment which must be reviewed, analyzed and to which EPA must respond. Drinking water standards promulgated by the Office of Drinking Water also establish the precedents for other EPA and State programs including RCRA and Superfund.

Lead-in-drinking water regulations mirror the general problems associated with scientific rulemaking. The difficult scientific issues surrounding the lead-in-drinking water regulations have further prolonged an already slow standard setting process. Because of the large number of comments EPA received on the August 1988 proposal, and the extensive amount of time spent implementing the Lead Contamination Control Act, EPA has not been able to promulgate a final rule as quickly as had been hoped. However, the major regulatory options will be available within the next few months, which should give us adequate time to move the final rule through the regulatory process by the end of calendar year, 1990.

The standard setting process and consensus building necessary to promulgate implementable regulations is a slow and complex process - which often runs counter to the setting of ambitious timetables. However, EPA is confident that efforts to date to implement the requirements of the 1986 amendments to the Safe Drinking Water Act have set a good pace for the completion of this task within the next two years.

Follow-up to Confirmation Hearing in the Senate 10/18/89

Question from Senator Chafee

Q. In hearings before this Committee, we have heard numerous witnesses, including the Office of Technology Assessment, testify that our coastal waters are seriously degraded. What is your plan for making sure coastal waters are not further degraded, and how can we improve those bays and estuaries where we already have a serious problem?

A. EPA is implementing its National Coastal and Marine Policy to guide the Agency's efforts in identifying, prescribing, and undertaking actions to protect, restore, and maintain the health of our coastal and marine ecosystems. This Policy contains goals for:

- recovering full use of our coastal waters and beaches;
- restoring and protecting all living marine resources;
- minimizing the use of the oceans for waste disposal;
- improving the scientific understanding of the impacts of pollution on the marine environment; and,
- promoting international efforts to protect the oceans.

We will pursue the cooperation of other Federal Agencies to build upon this Policy to create a Federal coastal and marine policy.

EPA is assessing its base programs, and redirecting some of its resources, to assign higher priority to coastal and marine issues. During the course of the next two years, the Agency's water programs will be putting more emphasis on near coastal waters permitting, criteria and standards, and nonpoint source controls, including plastics and marine debris abatement. Also, ocean dumping of sewage sludge will be terminated at the end of 1991.

We will expand the National Estuary Program and geographic initiatives such as the Gulf of Mexico Program. These programs are primary means to achieve our goals in selected estuaries and coastal areas. They are also critical for developing new management techniques, new technologies, targeted scientific studies, and financing mechanisms at the Federal, State, and local levels.

In addition, it is imperative that our coastal science agenda be translated into an action agenda. Therefore, we must also educate and inform those who use coastal resources about balancing among conflicting uses. We will expand our efforts nationally to educate, inform, and train scientists and environmental resource managers at all levels to help them acquire the skills needed to deal with complex environmental problems and difficult management decisions.

Q & A For LaJuana Wilcher Senate Hearing

Senator Chafee:

Q. Will you make sure that the Ocean Dumping Ban Act is fully complied with? (i.e. by the end of 1991 will all those still dumping sludge be paying into a fund to construct alternatives?)

A. EPA has met the statutory deadline. Final permits were issued on time (8/14/89) and the enforcement agreements were signed by the EPA, the States of New York and New Jersey, and the dumpers. The following are the phase out dates:

- o N.J. Dumpers: 3/17/91 (date set by State law)
- o Westchester/Nassau: 12/31/91
- o New York City: 20% by 1/1/92; remainder by 6/30/92

A fee schedule is established based on dry tonnage dumped, with fees going to various accounts which are earmarked for specific purposes. Fees start at $100/dry ton and escalate to $200/dry ton by 1/1/91. The bulk of these fees is returned to the dumpers for use in developing alternatives to ocean dumping.

After 12/31/91, fees stop and penalties begin, starting at $600/ dry ton and escalating over time. Initially, the bulk of penalties go back to the dumper for use in developing land based alternatives, however, over time less and less of the penalties go back to the dumper.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 19 1989

OFFICE OF
WATER

Honorable James M. Jeffords
United States Senate
Washington, D.C. 20510

Dear Senator Jeffords:

Enclosed are my responses to the questions you submitted as part of my confirmation hearing yesterday before the Committee on Environment and Public Works. I believe this provides the information you requested.

I appreciate the opportunity to appear before the Committee and to respond to your questions.

Sincerely,

LaJuana S. Wilcher

LaJuana S. Wilcher

Enclosures

Question In regard to Section 518 of the Clean Water Act -- 1987 Indian Amendments have you completed the required regulations specifying the process for treating Indian Tribes as States under the Act?

Answer: Section 518 of the 1987 amendments to the Clean Water Act authorized the EPA Administrator to treat an Indian tribe as a state for purposes of Title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, and 404 of the Act. The section requires that the Administrator publish final regulations, specifying how Indian tribes will be treated as states, within 18 months of enactment. The Agency published an interim final rule, "Indian Tribes: Water Quality Planning and Management" in the Federal Register on April 11, 1989. This rule implemented the procedures for treatment of Indian tribes as states under sections 106, 314, and 319 of the Clean Water Act (CWA). EPA published a proposed rule for treatment of Indian tribes as states for the water quality standards program in the Federal Register on September 22,1989. EPA expects to publish a proposed rule on treatment of Indian tribes as states under section 404 of the CWA this month, and a proposed rule which would permit Indian tribes to seek section 402 (NPDES) and state sludge program approval is expected to be published in January of 1990. Although the statutory deadline has not been met for promulgating all of the regulations, the Agency is making substantial progress in meeting the statutory requirements of section 518. EPA will continue to take the necessary actions to expeditiously promulgate the regulations in final form.

Question In which ways are you treating Tribes as States and in which ways are you not? Why?

Answer: EPA is treating Indian tribes as states under all applicable Clean Water Act programs. The Agency has also recognized some unique circumstances applying to Indian tribes and has modified its requirements to make it easier for tribes to implement effective programs. For example, EPA has recognized the lack of financial resources available to many tribes and has waived the matching funds requirement for some grant programs, and has made the matching requirements more flexible in other grant programs. EPA has also waived some of the requirements for laboratory capability and has provided alternative mechanisms for providing criminal law enforcement capability. The tribes are, however, held to the same basic program requirements as are states. In the case of wastewater treatment grants, Indian tribes can apply for grants under the Indian set-aside program without applying for treatment as a state.

QUESTION: Since passage of that Amendment you were given flexibility in establishing set-asides for various Tribal programs under the Act. How have you done this and how much will have been made available to Tribes through FY 1990?

ANSWER: Since the passage of section 518 the Agency has established an Indian set-aside of up to 3% for section 106 grants based on the Acting Assistant Administrator for Water's determination of the relative need of States and Indian Tribes and the available funding. In FY 88 the Agency set-aside $913,000 for Indian Tribes qualified to be treated as States. In FY 90 the Agency set-aside $1,006,500 for Tribes qualified to be treated as States. The Agency anticipates setting aside $2,000,000 in FY 90.

In FY 89 the Agency established a set-aside of $240,967 for section 314 Clean Lakes grants. In FY 90, Tribes qualified to be treated as States will compete on the same basis as States.

QUESTION: What are the major initiatives in the Office of Water which will promote implementation of pollution prevention (including source reduction and recycling) with respect to State water quality programs? Are there any funds available for States to use to develop new BMPs or new technologies which will enhance State efforts in this area?

ANSWER: Last Spring, the Office of Water developed an initial draft strategy: Water Programs: Toward a Prevention Ethic. That strategy explained how the Office of Water plans to integrate pollution prevention into all of its Federal and State programs over the longer-term. In the short-term, the Office of Water, in cooperation with the Regions, is proposing the following pollution prevention initiatives:

- **Sustainable Agriculture:** develop and implement prototype demonstrations of sustainable agricultural practices that will prevent pollution from pesticides.
- **Integrated Permitting:** incorporate multi-media source reduction and recycling requirements into media-specific permits through permit writer training.
- **Industrial Pollution Prevention Through Regulation:** ensure that opportunities for pollution prevention, water conservation, and cross-media transfers are fully and effectively integrated into the regulatory process for effluent guidelines under section 304(m).
- **Chesapeake Bay Pesticide Index and Registry:** reduce the environmental impact of pesticides in the Bay watershed by encouraging use of pesticides that minimize potential risk.
- **Environmentally Responsible Management of Agricultural Chemicals:** promote prevention in management of agricultural chemicals, evaluate the effectiveness of these activities, and develop and implement educational strategies.
- **Reducing Lead in Drinking Water:** support outreach activities, provide technical assistance and training, and support applied research and field studies that investigate the efficacy of new pollution prevention techniques and technologies to reduce lead in drinking water.

All of these projects will help EPA and the States to fully integrate pollution prevention into their water programs (surface water, drinking water, and ground water).

In addition, the Office of Pollution Prevention (OPP) is managing the award of grants to States. In FY 1989, OPP awarded $3.2 M to 13 States and one Regional Agency. These were multi-media grants awarded for general technology transfer (including water). OPP indicates that it anticipates awarding an additional 15 - 20 grants amounting to another $4 - 6 M in FY 1990. Again, these will be multi-media grants. However, OPP indicates that it intends to use this second round of grants to fund some program initiatives such as developing BMPs or new technologies designed to enhance State water pollution prevention activities.

QUESTION: What barriers exist in the various water statutes you administer that interfere with pollution prevention initiatives being undertaken either by EPA or the States? Do you recommend legislative changes?

ANSWER: As the Office of Water (OW) developed its draft pollution prevention strategy, OW conducted an initial, limited examination of statutory authorities under the Clean Water Act, the Safe Drinking Water Act, and the Marine Protection, Research and Sanctuaries Act to identify potential statutory barriers to pollution prevention. As a result of this examination, the Office of Water concluded that nothing in its statutes was inconsistent with pollution prevention.

As OW completes its strategy and undertakes a number of proposed pollution prevention initiatives, statutes will be examined more carefully for potential obstacles. At that time, recommendations for legislative changes will be formulated, if needed.

Question: What would be the most effective approach for establishing a strong water quality protection program for Lake Champlain?

Which of the programs you administer would either be most appropriate to include Lake Champlain under or would serve as an appropriate model for a new program. Would you support such a program?

(the 4 programs: Great Lakes, Chesapeake Bay, Naragansette Bay, or a demonstration lake under the Clean Lakes program.)

Answer: I support a strong water quality protection program for Lake Champlain and each of the respective approaches may offer opportunities to achieve this end. I believe the Clean Lakes program offers the best opportunity for the near term since it focuses resources, identifies problems and with community support develops alternative approaches to protect and restore the lake resource. The Agency in cooperation with the U.S. Geological Survey (USGS) and the States of New York and Vermont is conducting an extensive assessment of Lake Champlain. The present study is estimated to cost $903,000 and will be completed by the summer of 1992. When completed EPA will be able to evaluate the best approach to achieve a strong water quality protection program for Lake Champlain.

QUESTION:

Many new responsibilities have been given to the States since the Clean Water Act was amended in 1987. For example, the phase out of the Federal Construction Grants program to be funded through a State revolving loan program, and the identification of toxic hot spots as well as to develop individual control strategies for toxic pollutants.

Will you seek funding at the full authorization level under Title VI (State Revolving Loan Fund) and Section 106 (Grants for Pollution Control programs) which serve as major sources of funding to States attempting to fulfill new responsibilities.

ANSWER:

I am concerned about the funding gap faced by the States . I will be prepared to support the highest possible appropriations for the SRF and Section 106 programs consistent with EPA programmatic priorities and national budgetary constraints. This is a decision which will have to be made in the context of each year's budget development process.

NOMINATIONS TO POSITIONS AT THE ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, NOVEMBER 8, 1989

U.S. Senate,
Committee on Environment and Public Works,
Washington, DC.

The committee met, pursuant to notice, at 9:36 a.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senators Burdick, Chafee, Lautenberg, Reid, and Lieberman.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator **Burdick**. The Committee on Environment and Public Works meets today to hear from Don Clay, the President's nominee to be EPA's Assistant Administrator for Solid Waste and Emergency Response, and from James Strock, nominated to be EPA's Assistant Administrator for Enforcement and Compliance Monitoring.

The office which Mr. Clay will head is responsible for implementing two important programs, Superfund and solid waste. The EPA has been severely criticized for its implementation of both of these programs. To his credit, Administrator Reilly took the initiative to address Superfund's problems. The solid waste program, regrettably, has not been subject to similar attention, and now we find ourselves at the moment of solid waste reauthorization. If Mr. Clay should be confirmed, he will have a tall solid waste order, as we in the Congress are demanding significant improvements in the implementation in both the municipal and the hazardous solid waste programs.

I will expect strong leadership and cooperation of both Mr. Reilly and Mr. Clay as we soon embark upon the reauthorization of the Solid Waste Act.

Finally, I wish to state my serious concern with EPA's enforcement efforts, which I have found measurably lacking. Senator Reid and his subcommittee members will soon begin hearings on this topic.

I have already directed my own staff's involvement in this effort, and I know Senator Reid and his subcommittee members will be thorough and to the point. We can all anticipate thoughtful recommendations and results from their work.

We have on hand the information requested of these two nominees, along with their biographical statements. These will be included in the hearing record at an appropriate point.

Senator Chafee, do you have some comments?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman.

First of all, I want to thank you for moving these nominees through the confirmation process. With the completion of today's hearing, you will have guided this committee through each EPA nominee provided to date. In other words, no one can say that this committee is dragging its feet.

There is one more nominee to come up. That's for R&D, but that hasn't even arrived yet, so this completes all those that are before us, and I want to thank you for that.

Mr. Clay, as the Assistant Administrator for Solid Waste and Emergency Response, to you will fall the challenge of cleaning up the contaminated sites, namely the Superfund and also we will be dealing with you as we reauthorize RCRA. So those are two big programs.

One thing, we do hope that in connection with the solid waste we will come up with some imaginative approaches. We want to think about recycling, reduction in the waste stream itself, and other approaches to it, because this is a problem that is overwhelming every community in the country, as you well know.

Mr. Strock, in many ways you inherit some of the potentially most challenging duties in the agency. Here in Congress over the past 20 years we have passed a sweeping array of laws designed to protect the environment. Your title includes the term "Compliance Monitoring," but I think you ought to focus also on the enforcement side. We hope that you will aggressively penalize those who flout our environmental laws, and we look for you to do that.

Thank you again, Mr. Chairman. If confirmed, we will be dealing with these two gentlemen over the years and we look forward to working with them. Again, I want to thank you.

Senator BURDICK. Senator Reid.

Senator REID. No statement, Mr. Chairman.

Senator BURDICK. Senator Lautenberg.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman. I am pleased to have the two nominees before us.

Mr. Chairman, one of the delights of serving on the committee is that occasionally you get a chance to cross-examine someone like Senator Simpson.

I want welcome my distinguished colleague, Congresswoman Morella, and to say that we are pleased with the nomination of Don Clay. The position to which he has been nominated represents many challenges. It is a job that includes responsibility for both Superfund and RCRA. And while the recent Superfund Management

Review holds new promise for this often-troubled program, the proof is, as they say, in the pudding.

Bill Reilly has made numerous commitments to turn the program, and it is going to be up to the new Assistant Administrator to make sure it happens. That's quite a management task. Superfund's final goal is permanent and protective cleanups, but it takes a lot of steps to reach that goal—training and retraining the Superfund workforce. You are aware, Mr. Clay, of the problems that we've had in the past. You have been a part of the EPA structure for some time and have compiled a commendable record of getting the job done. You know where the weaknesses are.

Bringing consistency in national leadership to the program is required. Making the contracting process competitive and efficient, getting rid of the red tape from the Technical Assistance Grants, those are essential, and using the law as a tough enforcement tool to make polluters pay for stringent cleanups. Those are some of the challenges that you face.

In addition to the engineering training that Mr. Clay has, he brings eight years of EPA management experience to this job. That is important because I believe that the Superfund program by itself presents one of the toughest management jobs around here. As Chairman of the Senate Superfund Subcommittee I am committed to make that program work.

A good dialogue on Superfund exists now between Congress and the EPA, and I look forward to that continuing. But I would note that a critical challenge now faces EPA and the new Assistant Administrator: the NCP, the National Contingency Plan, the master regulation for Superfund. It has to be completed by early next year. The proposed version of the NCP, released in the final days of the Reagan Administration, raised serious doubts. The environmental community and I went on record, pointing to a number of significant concerns with the proposal's inconsistency with the law.

While we are encouraged by EPA's current efforts to overhaul Superfund, the NCP is more than a management strategy. It is the law, or at least the agency's official interpretation of the law, and I am committed to working with the Administration to make Superfund work better. But cooperation takes effort on both sides, and I hope that the Administration will foster this cooperative spirit by giving us a National Contingency Plan that is true to the letter and the spirit of the law.

Running Superfund is a tough task, but in our country, scarred by hazardous waste sites, we have no choice but to meet the challenges. I believe that Mr. Clay can and will succeed in making Superfund work. It will take dedication and fierce adherence to the law—a tall order, but you obviously wouldn't be here unless you wanted to take on this challenge.

I look forward to working with you, and I thank the Chairman for holding this hearing.

Mr. Chairman, I do want to make a very short statement about Mr. Strock, whom we also welcome, and that is that it gives us a chance to examine the nomination for the agency's Enforcement Office. This is a central principle in our environmental law, and it is to make the polluter pay for the cleanup.

This principle not only achieves environmental justice and protects the public from picking up the tab, but it also provides a strong disincentive for polluting in the first place. The Office of Enforcement and Compliance Monitoring can play a critical role in making our environmental laws work, and I look forward to the testimony and the views of Mr. Strock on how he plans to carry out this important task.

I welcome both of these nominees and my colleagues, and I thank you, Mr. Chairman, for holding this hearing.

Senator BURDICK. Senator Lieberman.

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thank you, Mr. Chairman. I have a prepared statement which I would ask to be included in the record.

I want to briefly welcome my colleagues, Senator Simpson, Senator Wilson, Congresswoman Morella, and the two nominees, and to say to Mr. Strock how important I think his work will be. Particularly coming from my past life as Attorney General, I am very sensitive to the enforcement of these laws, and understanding that our honesty and our efficiency in enforcing the laws is really keyed to so much else we try to do in environmental protection because we are often trying to change behavior. Very often people are doing things that are either easier or cheaper and they need the stick as well as the carrot to get them to comply.

So I look forward to working as a member of Senator Reid's Subcommittee on Oversight and continuing to work with him to keep an eye on the enforcement aspect of EPA.

Just briefly, Mr. Chairman, let me say about Mr. Clay's nomination that I have some specific questions for him later on, but I do think that the President should be complimented for choosing a career professional for this important position. I think it sends a good message to all those who do the work in the long haul, usually invisibly, that one of their number can be picked out for a position of this time. I look forward to working with him.

Thank you, Mr. Chairman.

[Senator Lieberman's statement follows:]

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

I welcome Mr. Clay and Mr. Strock and look forward to working with them during the next four years.

Each of these nominees has been selected for especially important positions within EPA.

From my background as Attorney General of Conn., I am especially concerned with the enforcement of our nation's environmental laws. Congress will write the laws, but without proper enforcement, the laws will not have the impact we seek.

As a member of Senator Reid's subcommittee on oversight, I hope to be playing an active role as an overseer of EPA's enforcement efforts during the next several years. I will seek to ensure that EPA adheres to the commitments it makes to Congress in the area of enforcement. In that capacity, I look forward to a continuing dialogue with Jim Strock.

As a member of Senator Baucus's subcommittee which will be addressing RCRA reauthorization within the next year, I will be seeking the advice and expertise of Don Clay and his staff. That is why I am particularly pleased that the President has chosen an extremely highly regarded career professional for this difficult task. In so doing, the President sends an important message to all civil servants within government. This is particularly important within EPA where retaining professional staff has become a major problem. I look forward to working with Don on the critical issues of solid and hazardous waste disposal, which are of great concern in my state of Conn.

Senator BURDICK. Senator Simpson, would you like to say a word on behalf of your nominee?

STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, you have been very kind to set up this meeting, and I would appreciate it if you would not allow Senator Lautenberg to ask any questions of me at all.

My remarks are very short. Jim Strock has served here with me on this committee. There are many on both of these staffs that know this man. He was an exceptional staff person in terms of his personal life and his personal endeavors. He is a graduate of Harvard College, Harvard Law School, postgraduate work at Oxford University, published a dozen articles or more on environmental policy and environmental law, won an award from the American Bar Association for an article he wrote on Superfund. Senator Lautenberg and I know that as we went through the conference committee on Superfund, which was just a ghastly experience, Jim Strock was right there to assist in getting us through a very difficult conference.

He was actively involved in that legislation, and particularly in the area of the settlement policy arena, as Frank will remember.

In addition to those things, when you see his remarkable biography—a member of the Directors of Youth Service America; he was in Denver practicing law and was with the Colorado Children's Legal Clinic; First Lieutenant in the Army JAG.

I won't go into that. I will just conclude by saying that I can think of no one better suited to be in charge of enforcement at EPA, and I am convinced he will do an exemplary job in that position. He will vigorously enforce the Nation's environmental laws and help to bring justice to those who would pollute this country.

He is an intellectual, and yet he has a remarkable degree of common sense, something that will serve him quite well in this latest endeavor. He is very steady, very thoughtful, very bright. He also goaded me along to try to get some issues of volunteerism in America, and that was what our colleague, Senator Nunn, and others have promoted.

He is not a partisan man. I don't know where that bum rap came from. He is here to answer his own questions. I would hope, certainly, that pettiness and personality differences would not, in any way, injure his extraordinary willingness to proceed.

I think you will see that he is inquisitive and bright, and there other attributes which you may not have the opportunity to take the time to find, but he is very friendly. He is a very kind and a very able man. He really is a superb person. I don't know where any of the opposition was cranked up and where it came from, but he's here to handle that in his own very measured and practical way.

So I earnestly commend him to you. He is the kind of person that you would hope under any Administration would come forward to do the tough duty in this country, and this is one of the toughest ones.

I thank you, Mr. Chairman, very much, for your courtesies and for setting this hearing.

Senator CHAFEE. Mr. Chairman, regrettably I have to leave. Both Senator Simpson and I are going to the White House, so I want to express my regrets to Senator Wilson and to Congresswoman Morella and, of course, to our two nominees. But I want to thank you again for holding this hearing.

Senator BURDICK. Very fine.

Senator Wilson.

STATEMENT OF HON. PETE WILSON, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you, Mr. Chairman.

Mr. Chairman, it seems that it was not long ago that I sat at this table in a similar circumstance where there were more Members of Congress than there were nominees. That was at the time of the confirmation hearing for Administrator Reilly. At that point I and my colleagues, with a great deal of personal pride, urgently advocated the action of the committee in giving approval to his nomination, sending it to the floor, and I think that time has proved the wisdom of the committee's action and made quite understandable the enthusiasm expressed by those of us at this table.

I find myself in a similar happy situation this morning. Jim Strock, as you have been told, is no stranger to this committee. It is somewhat anomalous for me to be introducing him to this committee since you have had the benefit of his knowledge and energy and integrity for the years that he was an associate counsel to the committee.

As you have been told, he brings an extraordinarily energetic intellect, one that has been demonstrated in a remarkable academic record of achievement. He is a graduate magna cum laude of Harvard College. He took his Bachelors degree there and then went on to take his Doctor of Laws at Harvard. He has also done distinguished graduate work at New College at Oxford University and has published extensively in the environmental field.

He has been in private practice in Denver with a distinguished law firm there. He has, of course, first whetted his appetite for environmental issues by serving as an assistant to Bill Ruckleshaus during the period that Mr. Ruckleshaus was pioneering environmental protection in this Nation. I think he has given the committee ample evidence of his ability as an administrator and as a manager in the term that he served as Acting Director and General Counsel of the Office of Personnel Management.

In short, by that combination of intellect and experience, including very importantly his experience as associate counsel on this committee, he is admirably prepared and equipped to assume the very, very difficult and important role of Assistant Administrator for Enforcement and Compliance Monitoring at the Environmental Protection Agency. His knowledge of Superfund, his knowledge of the issues that relate to toxic pollution will be of extraordinary benefit to this committee as you and the agency work jointly to solve those problems for America.

In short, I think that in the relatively brief years that he has been with us, he has demonstrated that he is equipped by intellect and integrity and great energy, as well as a considerable amount of expertise in the environmental area, to handle this very, very challenging role.

So it is with genuine enthusiasm and pride that I urge the confirmation or the recommendation by this committee that his nomination be sent to the floor with a recommendation for confirmation by the full Senate.

Senator BURDICK. Thank you.

Congresswoman Morella, do you have some words to say?

STATEMENT OF HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Ms. MORELLA. I would love to, thank you.

Mr. Chairman and members of this very important committee, I am very pleased, first of all, Mr. Chairman, that you have so expeditiously arranged for this confirmation process for such very important posts. This is such an important committee because Shakespeare once said, "To nature none more bound," and here you are, the people who are protecting that environment and nature which, if unprotected, could have irrevocable damage, so I commend you.

It is a particular pleasure to me this morning because I am introducing to you a man about whom I am very proud and whom I enthusiastically recommend, but who is also a constituent of mine in the neighboring Montgomery County, Maryland. He is from Bethesda, Maryland, Don Clay, and as has been stated, he has been nominated to be Assistant Administrator for Solid Waste and Emergency Response.

As you look at Mr. Clay's credentials, academically he holds two degrees in chemical engineering; he has very impressive and extensive experience; his managerial skills; his temperament; his dedication—all of these qualify him exceedingly well for this post.

He has served in top management positions in the Federal Government for the past 18 years. He was Acting Assistant Administrator in the Office of Air and Radiation. He had under his purview 880-plus employees. Before that he was Deputy Assistant Administrator, and prior to that he served of EPA's Office of Toxic Substances. Indeed, prior to that he was with the Consumer Products Safety Commission and FDA, the Food and Drug Administration. He has been an exemplary professional.

I would like to pick up on what Senator Lieberman said. It is so great when we can, from within our ranks of these people who serve America, demonstrate and show the kind of quality and experience and move these people upward to other jobs. We have had before the Post Office and Civil Service Committee, on which I serve, Paul Volcker and the Volcker Commission to talk to us about excellence in public service. This man demonstrates that. In Montgomery County, Maryland, I represent about 60,000 active Federal employees, and this man is outstanding.

I also wanted to point out that I am very impressed with his many awards, not the least of which is the Presidential Distinguished Executive Award for Sustained Extraordinary Accomplishments in Management. He has also received the Presidential Meritorious Executive Award.

I can think of no more important position than the one that Don Clay has been nominated for, and I believe that the country will benefit from his service in this very high level of the Environmental Protection Agency. He is ready for the challenge that you have enumerated.

Again in the words of Shakespeare from Henry VIII, "The force of his own merit makes his way." I recommend him and I thank you for the honor of so doing.

Senator **Burdick**. Mr. Clay, would you like to defend yourself?

Senator **Wilson**. Mr. Chairman, may I be excused? I am required to attend a hearing of the Armed Services Committee to learn the impact of the sequester upon the Pentagon.

Thank you.

Ms. **Morella**. Mr. Chairman, may I also be excused and let Mr. Clay take care of what I know he can handle exceedingly well?

Senator **Burdick**. Certainly.

Ms. **Morella**. Thank you.

Good luck to both of you.

STATEMENT OF DON R. CLAY, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. **Clay**. Thank you, Mr. Chairman. I was trying to think of what Shakespeare I know, and all I could come up with is "A tale told by idiots, full of sound and fury, signifying nothing."

But I don't think that's exactly appropriate, so I will start some other way.

Good morning, and thank you, Mr. Chairman and distinguished members of the committee. It is certainly a pleasure to be here this morning. It is an honor to stand before you as the President's nominee for Assistant Administrator for Solid Waste and Emergency Response.

With your permission, Mr. Chairman, I would like to insert my full statement in the record and briefly summarize it this morning.

Senator **Burdick**. Without objection, so ordered.

Mr. **Clay**. What I would like to cover then, briefly, are some of my qualifications for the job, although I think the Congressman hit many of the high points of my general management approach, and then some thoughts I have about both Superfund and RCRA.

Turning first to my qualifications, I am a professional engineer, a chemical engineer in the State of Ohio. I have over 17 years of management experience with the Federal government, including the Food and Drug Administration, Consumer Products Safety Commission, and the EPA. I have served twice as Acting Assistant Administrator in different program areas in EPA, in the Office of Pesticides and Toxics as well as the Office of Air and Radiation, so I have almost two years' experience acting as Assistant Administrator, and I look forward to being one for real in yet another area.

As was pointed out I have several management awards, as described in my prepared testimony. Also, importantly I think, I have a lot of experience working with both our Regions and our States, which I think will be very important if I am confirmed for the job for which I am nominated.

Turning briefly, then, to my proposed general approach, I think it is very important that I provide strong leadership and strong management to the office. I also think it is very important, as many of you have said, to work with Congress ease tensions and communicate, and not to surprise each other. If confirmed, I am committed to doing so. I think this committee has taken an exemplary step in doing that, and I certainly want to build upon that, with Mr. Reilly's help, as we go forward in the various areas.

We need to have better communication of the goals of the program. I think there has been some misunderstanding on that. I think it is important to communicate with the public in getting acceptance of the goals.

I also think we should try to rebuild public trust, because it is certainly clear that the program has been harmed in the past by lack of public trust. If confirmed, that is something that I especially want to work on.

As I said earlier, I think the State relationships will be very important because much of what we do is in fact in partnership with the States.

Internally, I think that staff morale is a problem in the Office of Solid Waste and Emergency Response and something which I need to work on. I think that many people are very discouraged. I want to create an atmosphere in which creative approaches and innovative solutions are valued. I want to decide key issues and provide a good direction, for the program.

I want to work on regional consistency in oversight because, as you know, much of the program is heavily delegated to the Regions. I want to make sure that we have national consistency on many of the decisions that we make.

My style, I think, will be solid and low-key management. I want to work with the staff. If I am confirmed, I want to build up morale, even in such things as the work space problem, which I think is an especially serious one for the Office of Solid Waste and Emergency Response needs immediate attention.

Turning specifically to Superfund, what I am interested in overall is a steady direction, slow, "steady as she goes." I think the "enforcement first" philosophy as articulated in the 90-Day Report is the correct way to go. I think the implementation of the 90-Day Report, as supplemented by the Lautenberg-Durenberger Report (on which we are working to try to make sure it does get into our implementation plan) is very important.

I think what we need to do is move steadily in that direction, and when we get to the time for reauthorization I think we will have built a record of what works, and what doesn't work.

I think it is very important that we emphasize private party cleanup through the enforcement mechanism. In the long term, I think that is the direction we have to go.

Additionally, I think there should be a special focus on innovation. Some of the experience I have had in biotechnology in the

Office of Toxic Substances will, I think, stand me in good stead, because there is a biological revolution about to happen.

It is important to meet the statutory deadlines. I know you don't set them lightly, and we don't take them lightly. If confirmed, I am committed to working with you to meet them. Just last October 17th we met two important ones, and if confirmed I will work to make sure that we certainly work very hard on all future deadlines.

Reauthorization will be on us before we know it, in 1991. What I hope to bring to that is a solid record of several years of steady implementation of the program, and we can then work together to find out what has worked and what has not worked as we both go into the reauthorization process.

Turning to RCRA, I think it is important that I strive to eliminate the "poor stepchild" image. As I have talked to various people in the program in the few weeks that I have had, I think there is a feeling that RCRA has been neglected, something that I intend to spend more attention on than has been spent in the past. It is something that I think needs a lot of emphasis. One of the things I plan to do if confirmed is to initiate a comprehensive management implementation study of RCRA. I am interested in going out and finding the causes of some of the problems that I have seen, such as the low compliance rate, the slow rate of permitting, and the growing Correction Action Program. It is something that I think needs to be done and it is something that I want to have done.

Clearly, reauthorization of RCRA is much closer upon us than Superfund. In fact, there is a group within the agency that is already addressing this, and I intend to be a key player on that group.

It is also important, as several of you have mentioned this morning, to recognize and tackle America's solid waste crisis. I think we are in a crisis situation in that area. If confirmed, I plan to initiate a smaller study on municipal solid waste. Within the past year we have published EPA's Agenda for Action for solid waste. I want to build on that and pull some of the disparate efforts that we have going away into a single, consolidated report. Of course, I want to be able to share with you, upon completion of that report, what we think needs to be done in the solid waste area.

Clearly, one important solution to any of this, for both hazardous and solid waste, is pollution prevention. Waste minimization is the way of the future. We cannot continue to generate waste in the way that we have in the past. Recycling must play an important component because, again, it is important that we try to minimize what has to be disposed of at the end.

We will work hard, also, in the RCRA area to meet the deadlines. You have established many challenging deadlines for us, and I will certainly give them my best shot. I can't guarantee we will meet all of them, but I will certainly guarantee a good effort in trying to meet them.

In conclusion, I think EPA has accomplished a great deal in these areas. I'm not trying to tell you that there haven't been problems, but I think there have been some successes too, and there is a lot yet to be done. However, in the short time I have been with this part of the program I have been impressed with the caliber of the staff, both at headquarters and in the Regions, to get the job done. Clearly we have the commitment and the strong and capable guidance of Bill Reilly and his deputy, Hank Habicht. With that guidance, the outstanding leadership of President Bush, who is truly an environmental President, and the bipartisan sense of urgency and environmental commitment we have here with this committee and other committees on the Hill, I look forward to forging ahead with a strong agenda for both Superfund and RCRA in the years ahead, if confirmed.

Gentlemen, I appreciate the opportunity to make a statement, and at this time I would be pleased to answer questions. Thank you.

Senator **Burdick**. Do you know of any matters which you may not have already disclosed that might place you in any conflict of interest if you are confirmed in this position?

Mr. **Clay**. No, sir.

Senator **Burdick**. Are you prepared, at the request of any duly-constituted committee of the Congress, to appear in front of it as a witness?

Mr. **Clay**. I am.

Senator **Burdick**. What do you consider to be the most important legislative issue facing both the Municipal Solid Waste Program and the Hazardous Solid Waste Program?

Mr. **Clay**. The most important legislative issue, sir?

Senator **Burdick**. That's right.

Mr. **Clay**. Well, I think the role of the Federal Government is something that we have to work on there. Particularly in the solid waste area, I think there is a leadership role for the Federal Government in what that role is and how we promote recycling. I think the Government has to do things such as create markets, items like that, but there is also a role for the State and local folks.

In the hazardous waste area I think the most important thing we can do is implement the law as you have written it. We have put many regulations out very rapidly and are still turning them out, and I am very anxious to continue doing that. Of course, as we get into RCRA reauthorization, I think that subtitle D will in fact take the most work.

Senator **Burdick**. Are you committed to initiating a major management review of the solid waste programs? If you are, can you approximate the time frame in which you would complete such a review?

Mr. **Clay**. I certainly want to do a review one of RCRA because I think that the Superfund doesn't need to be revisited. Mr. Reilly just had his 90-Day Study and we have the report by Senator Lautenberg and Senator Durenberger, so I don't think study is needed as much there. I need to implement these.

In the RCRA area I am committed to doing a review. I have not picked an exact time frame because I want to sit down with the Regions—I envision a joint effort between the headquarters and the Regions. I haven't worked with them on this yet, but I am thinking in terms of a three to four month time frame. I don't want to be too specific because I want to give the Regions a chance to scope it out. It has to be done in time to play a meaningful part in reauthorization but can not be rushed artificially. But I am thinking in the three to four month time period, sir.

Senator **Burdick**. Thank you.

Mr. Reid, any questions?

Senator **Reid**. No questions, Mr. Chairman.

Senator **Burdick**. Senator Lautenberg.

Senator **Lautenberg**. Thank you, Mr. Chairman.

Mr. Clay, you have had an impressive record as an EPA manager. As we have both agreed this morning in our respective remarks, a key challenge for Superfund is better management. What is your general sense of how you get the program acted upon more effectively?

Mr. **Clay**. I think you have to give it steady direction for a period of time. I think that the direction is laid out in our 90-Day Report, aided by your recommendations with Senator Durenberger. I think we now have to do it. We're going into an implementation phase. We're not going to be fighting the problem. We're going to say, "Here's what needs to be done," and go about doing it. I am prepared to do that.

There are a series of small decisions that just keep adding up, and I just——

Senator **Lautenberg**. Have you had a chance to evaluate the skills of the people who are there now in your department and whether or not you need to make changes? I don't want you to forecast terminations here, but do you have the tools to do the job? The morale, I think it's fair to say, is somewhat lowered because EPA of necessity—unfortunately—has the problem of changing management, of changing budgets, of people very insecure about their future. The reauthorization of Superfund in 1986, as we both know, was a major battle. There was a long period of time during which there was no law in effect essentially. It was carried on its first writing. So I think it was destructive to the kind of support that you would get from the staff, just the uncertainty. A lot of people left during that period because they didn't know whether they had jobs or not.

So I ask you, Don, what do you think you can do? I come out of corporate management, and keeping people up and productive was a critical factor in the success of the company that I ran. Do you have anything you would like to mention? Or do you need more time to kind of run it through?

Mr. **Clay**. No, I think that the people I have found are quite good and quite dedicated. As you pointed out, we have had a high turnover rate, maybe as much as 20 percent. For example, the Region II RCRA office has 40 percent turnover per year. We have to stop that kind of hemorrhaging. We can't continually replace that many people.

One of the key factors I have found in headquarters, in fact, is space. Many of the people that we have in Oswer are in fact sick, and I think we have to do something about that.

Senator **Lautenberg**. Indoor air quality, right?

Mr. **Clay**. Well, yes. It's not a very healthy place to work, and I think we've got to do something about that.

But I think what I can provide is, in fact, a sense of steady leadership. That's something I've done in other jobs that I've had. I went into the Office of Pesticides and Toxics after a time of big turmoil, and I'm sort of low-keyed, steady, solid; I'm not anxious to go anywhere else. I am looking forward to this job. I love management, I love management in the Executive Branch, particularly in the EPA, and there are times I think I would pay a little bit of money to take this job rather than the other way around. I enjoy it.

Senator **Lautenberg**. Low-keyed doesn't mean lack of force, I hope? I mean, you're going to have to take the programs by the scruff of the neck and move them along. I think that if your people see that you are serious and that you are behind them, then you have a good chance for success.

I am concerned, being the Senate author of the Right to Know Program, I don't think that EPA has been giving adequate resources or focus to emergency planning. Do you agree with me—you are familiar with the program—that we haven't had enough attention paid to it? Do you plan to beef up EPA's role in that area?

Mr. **Clay**. Yes. I am very sensitive to the needs, as you and I talked about earlier. It is something I will look at and will beef up to the extent I can.

Senator **Lautenberg**. We have a couple other questions.

One is the National Contingency Plan. That is due out early next year. We hope that some serious legal questions on cleanup standards and remedy selection are going to be resolved in that NCP.

Are we going to have your support for solution of the problems raised by the Reagan Administration's proposals on these issues? Are we going to get in there and really ask the questions and put forward a program that has teeth in it and that we can enforce?

Mr. **Clay**. I have not spent a lot of time with the National Contingency Plan. It's fairly far down the track, but you have my commitment in fact to look at it and work with you. I'm not sure we'll agree on each and every aspect of it, but I will certainly communicate that and have a dialogue together.

Senator **Lautenberg**. The Pollution Prevention Program, that's a major legislative priority of mine. Do you see any way that your office can improve the agency's pollution prevention effort?

Mr. **Clay**. Clearly, the agency and the Administration are thinking about putting forward a pollution prevention bill but haven't done so at this time. There is one that has been discussed in the other parts of the Administration. I think it is fair to say that I am prepared to work with you on having your input into that.

Senator **Lautenberg**. The TAG program, we discussed that as well. It is also an innovation of mine; it was done during the Superfund conference. Can we get your commitment to work to reduce the red tape to get this program going, get rid of excessive rules and regulations so that we can get to the heart of the matter and give those grants out and get the communities involved?

Mr. **Clay**. Yes. We have been working with the Office of Management and Budget on that and I think we are making some good progress there.

I think part of our success is communication with the community. That is an important part of it and you have my commitment to continue to do that. In the end we have to be responsible for Federal funds, so we will certainly reduce the red tape if we can, with the idea that sooner or later the Insector General will be there and say, "What are you doing, Don?"

Senator **Lautenberg**. I would just like to be reassured that you are going to stick up for the programs for which you are responsible and that you will fight back every time you have to when it comes down to limited resources, insufficient funds for the job, and say, "Look, it's going to be tough for me to do this," and not be led by OMB but rather be willing to stand up and face the problems that you have. You have professional responsibility and you are known as a man of integrity and principle.

Mr. **Clay**. I think my job is in fact to be an advocate for the programs. Mr. Reilly's job is to decide how those programs fit in with everything else,. But my job is to be the strongest spokesman I can for the programs with which I am entrusted.

Senator **Lautenberg**. It is good to hear that.

Thank you very much, Mr. Chairman.

Senator **Burdick**. Senator Lieberman.

Senator **Lieberman**. Thank you, Mr. Chairman.

Mr. Clay, thank you for your testimony. I have two general questions.

A central part of your work is going to be to deal with waste and the fact that in many parts of the country—certainly in my part of the country—we are running out of places to put the garbage. That is going to require some real leadership from the Federal Government on some obvious questions and some not-so-obvious but difficult questions, like the way we make packages for example. You and I have talked about that and I think it is very important for you to see yourself as an advocate and a leader in that area with the Congress and the public generally about how to get into recycling, how to use packages that can be used again.

I want to focus for a moment on a very specific problem that we have in Connecticut that I think is indicative of the problem generally. That will probably be on your desk. Under the 1986 amendments to the Superfund Act, the States have to certify that they have the capacity to handle the hazardous waste in order to get the remedial funds that are available. I know that our State has had some difficulty in being able to specifically certify to that capacity, and I don't think we're unusual in that now. The State is able to certify as to the steps it is taking to try to build up the capacity, but there is some concern that EPA, with a very technical reading of the law, could actually cut off Superfund to the States for remedial use.

I wanted to ask you whether you have thought about that problem and how you intend to approach it, basically to express my hope that you will work in an empathetic way with the States that are dealing with a very real problem.

Mr. **Clay**. We certainly will. We have just received the majority of the Capacity Assurance Plans. It is our intention to work with the States to make sure these plans meet the intent of the laws. We are anxious to clean up the environment, and not to arbitrarily cut-off funds over technicalities. There are about 12 places in the country where we anticipate beginning remedial construction this year although it may be fewer than that, depending on what the budget finally ends up to be. We will be establishing objective environmental and technical priorities for which of the many sites we will fund. Then we will plan to target review of the capacity assurance plans in those first and work very actively with those States to make sure that we don't have to get to what is legally required and not bring that is, denial of funding.

So we are prioritizing that way. We are very sensitive, and we will certainly work with the States, such as your own, to do so.

Senator **LIEBERMAN**. I appreciate that answer.

The second question has to do with medical waste which was very much in the news two summers ago, particularly in our area of the country. I know that some people think that the medical waste problem is overstated. In some ways, I think it helped to galvanize public opinion in favor of a whole host of environmental protection measures because it made environmental protection very real and personal to people.

I want to ask you about a different part of the problem. I have had some conversations with people who are in the field of developing new technologies for handling medical waste. They tell me that there is some concern that because there has not been Federal leadership in this area—for instance, in issuing guidelines as to how the States might handle medical waste—that there has naturally been a patchwork of regulations that has developed at the State level that they feel has made it difficult to develop new technologies in this area. In fact, Senator Baucus has introduced a bill which does give EPA the clear authority and direction to issue regulations for the handling of medical waste and its disposal.

I wondered, since some of these new technologies would be so helpful, whether you are aware of this problem and how you feel generally about the role of EPA in trying to create some basic national uniformity in this area.

Mr. **CLAY**. I'm very generally aware of it, but I do not have a position at this time. One of the things we plan to put in the reports to Congress is a compilation of some of the technologies, but I don't yet have a position on what the proper role of the Federal Government is, in fact, vis-a-vis setting standards for those technologies. I am generally aware but do not have a position at this time on whether to support the legislation or not.

Senator **LIEBERMAN**. So you are aware of the work going on to develop new technologies to deal with medical waste?

Mr. **CLAY**. Yes, sir.

Senator **LIEBERMAN**. I would just finally ask that as you go forward in this area you seriously consider the issuance of guidelines with a particular eye to this potential to develop these new technologies which may be environmentally effective and cost effective.

Mr. **CLAY**. I certainly will give you that, and we will certainly give it due consideration.

Senator **LIEBERMAN**. Fine. We will keep in touch on that.

Thank you, Mr. Chairman.

[Mr. Clay's written statement, résumé, responses to a committee questionnaire, and a letter from Friends of the Earth follow:]

STATEMENT OF
DON R. CLAY
ASSISTANT ADMINISTRATOR NOMINEE FOR SOLID WASTE AND EMERGENCY RESPONSE

BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
NOVEMBER 8, 1989

Good morning, Mr. Chairman, distinguished members of the Committee. It is an honor for me to appear before you as President Bush's nominee as Assistant Administrator for Solid Waste and Emergency Response at the Environmental Protection Agency.

Today, I hope to illustrate how I intend to function: with sound management practice, creative problem solving and plain, old fashioned hard work. Through these, we can successfully address the issues of environmental protection as they relate to Superfund and RCRA.

I feel fortunate to have the dynamic leadership and commitment of our Administrator, William Reilly, and our Deputy Administrator, Hank Habicht, to guide these efforts. I look forward to an open, constructive partnership with this Committee and the full Congress to help with the herculean tasks ahead. I would like to use the rest of my time to explain why I believe that I am fully qualified for the job of Assistant Administrator, and to share my vision of some of the challenges which lie ahead.

I have served as a career manager in three government regulatory agencies over the last 17 years. In these positions I was responsible for overseeing technical as well as enforcement programs that were national in scope, facing challenges similar to those of the Office of Solid Waste and Emergency Response (OSWER).

Throughout my tenures at the Food and Drug Administration, the Consumer Product Safety Commission and the Environmental Protection Agency the issues, problems and challenges have all been quite different, but the common thread has been a commitment to protect public health and the environment.

This is a commitment which I have taken quite seriously. I believe that the background and experience afforded me by these positions, including being the Acting Assistant Administrator for two very diverse EPA programs, have provided ideal "on the job training" for the responsibilities facing the Assistant Administrator for OSWER. I have been awarded the Presidential Meritorious Executive Award in 1987, and the Distinguished Presidential rank Award in 1988 for continuing excellence in government management.

One of my greatest challenges at EPA came when I served as the Acting Assistant Administrator for the Office of Pesticides and Toxic Substances in 1983. Following a period of great

TURMOIL AND LOSS OF PUBLIC CONFIDENCE IN EPA, I HAD AN OPPORTUNITY TO APPLY SOUND MANAGEMENT TECHNIQUES AND SOLID ORGANIZATIONAL PRACTICES TO HELP IMPROVE THE MORALE OF EPA EMPLOYEES, AND PUBLIC PERCEPTIONS ABOUT THE AGENCY AS WELL.

MORE RECENTLY, FOR ONE YEAR, I SERVED AS ACTING ASSISTANT ADMINISTRATOR FOR THE OFFICE OF AIR AND RADIATION, AND HELPED FRAME THE ISSUES FOR AMENDMENT OF THE CLEAN AIR ACT. WITH RCRA REAUTHORIZATION ON THE HORIZON, FOLLOWED BY SUPERFUND IN 1991, THIS EXPERIENCE WOULD PROVE INVALUABLE IF I AM CONFIRMED AS THE ASSISTANT ADMINISTRATOR. MY EXPERTISE AND ADVANCED TRAINING IN CHEMICAL ENGINEERING AFFORDS AN UNDERSTANDING OF SOME OF THE TECHNICAL COMPLEXITIES IN THIS AREA AND WILL AID IN TIMELY, INFORMED DECISION MAKING.

I HAVE ALSO PLAYED AN ACTIVE ROLE ON VARIOUS ORGANIZATIONS THAT CUT ACROSS THE AGENCY, SUCH AS THE RISK ASSESSMENT COUNCIL, THE RISK MANAGEMENT COUNCIL, AND THE EXECUTIVE RESOURCES PERFORMANCE REVIEW BOARD. THESE HAVE GIVEN ME AN IN-DEPTH LOOK AT SOME OF THE PROBLEMS AND ISSUES FACING THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE.

FINALLY, I HAVE WORKED CLOSELY WITH THE REGIONS AND THE STATES OVER THE YEARS IN RESOLVING ENVIRONMENTAL ISSUES. SINCE ONE OF OSWER'S GOALS IS INCREASED INVOLVEMENT AT THE STATE AND

LOCAL LEVELS, MY EXISTING RAPPORT WITH THE REGIONS AND WITH VARIOUS STATE ORGANIZATIONS WOULD PROMOTE THAT INVOLVEMENT.

I WOULD LIKE TO ADDRESS SOME OF THE CURRENT ISSUES FACING OSWER, STARTING WITH SUPERFUND. AFTER ALMOST A DECADE, THE SUPERFUND PROGRAM HAS RECEIVED MORE PUBLIC ATTENTION THAN PERHAPS ANY OTHER ENVIRONMENTAL PROGRAM IN THIS AGENCY'S HISTORY. I INTEND TO WORK VIGOROUSLY TO MANAGE AND OVERSEE THE IMPORTANT COMMITMENTS MADE BY EPA TO IMPROVE SUPERFUND, DRAWING UPON THE SUPERFUND 90-DAY MANAGEMENT REVIEW AND RESULTING IMPLEMENTATION PLAN, AS WELL AS THE THOUGHTFUL AND INFORMATIVE LAUTENBERG-DURENBERGER REPORT ON SUPERFUND IMPLEMENTATION.

THE BASIC ELEMENTS OF SUCH A PLAN WOULD SEEK TO: (1) CONTROL ACUTE THREATS IMMEDIATELY; (2) DEAL WITH THE WORST SITES AND WORST PROBLEMS FIRST; (3) CAREFULLY MONITOR AND MAINTAIN SITES OVER THE LONG TERM; (4) EMPHASIZE ENFORCEMENT TO INDUCE PRIVATE PARTY CLEANUP; (5) IMPROVE THE EFFICIENCY OF PROGRAM OPERATIONS; AND (6) ENCOURAGE FULL PARTICIPATION BY AFFECTED COMMUNITIES.

IT IS FAIR TO SAY THAT A TREMENDOUS AMOUNT OF WORK HAS, IN FACT ALREADY BEEN ACCOMPLISHED. FOR EXAMPLE, EPA RECENTLY MET A VERY IMPORTANT STATUTORY MANDATE TO COMMENCE REMEDIAL ACTIONS AT 175 SITES BY OCTOBER 17. IN ADDITION, OUR "ENFORCEMENT FIRST" PHILOSOPHY IS TAKING HOLD. EPA NOW ESTIMATES OVER $1 BILLION HAS

BEEN SPENT IN PRIVATELY CLEANUPS, WITH HOPEFULLY MORE TO COME.

SUPERFUND ALSO PRESENTS A GREAT OPPORTUNITY FOR DEVELOPING INNOVATIVE TECHNOLOGIES. BILL REILLY IS STRONGLY COMMITTED TO THE SITES PROGRAM AND THE CONCEPT OF APPOINTING A TECHNOLOGY CZAR. I SHARE THAT COMMITMENT.

WHEN I WAS DIRECTOR OF THE TOXICS OFFICE, I WAS INVOLVED IN DEVELOPING THE FEDERAL POSITION ON BIOTECHNOLOGY. ITS VALUE WITH RESPECT TO AGRICULTURE AND MEDICINE HAS ALREADY BEEN DEMONSTRATED, BUT WE HAVE JUST BEGUN TO USE BIOTECHNOLOGY IN THE AREA OF ENVIRONMENTAL CLEANUP AND LONG-TERM PROTECTION.

WE ARE ENCOURAGED BY THE WORK ON THE ALASKAN OIL SPILL, WHERE NUTRIENTS WERE INTRODUCED TO ACCELERATE GROWTH OF RESIDENT BACTERIA TO HELP SPEED THE CLEAN UP OF THE PRINCE WILLIAM SOUND. ALTHOUGH A LIMITED TEST PROJECT, ITS SUCCESS HAS SHOWN THAT THE TIME HAS COME TO SERIOUSLY USE BIOTECHNOLOGICAL SOLUTIONS TO SOME OF OUR WORST ENVIRONMENTAL PROBLEMS. MY GOAL WOULD BE TO FOSTER CREATIVITY, ENCOURAGE INNOVATION AND DEVELOP A WORKPLACE THAT VALUES AND REWARDS EXCELLENCE.

THE STATES PLAY A CRUCIAL ROLE IN IMPLEMENTING THE SUPERFUND PROGRAM. SHOULD I BE CONFIRMED AS ASSISTANT ADMINISTRATOR, I INTEND TO MAINTAIN A CONTINUING AND OPEN DIALOGUE WITH OUR STATE PARTNERS TO IMPLEMENT THE SUPERFUND PROGRAM, AS I HAVE IN OTHER EPA PROGRAMS. TOWARDS THIS GOAL A HIGH LEVEL POLICY GROUP OF EPA

AND STATE REPRESENTATIVES HAS BEEN ESTABLISHED RECENTLY THAT WILL MEET REGULARLY OVER THE NEXT FEW MONTHS TO WORK THROUGH SOME OF THE LARGER POLICY ISSUES FACING EPA AND THE STATES. I LOOK FORWARD TO PLAYING A KEY ROLE IN THIS FORUM.

DESPITE THIS PROGRESS, RECENT NATIONAL POLLS REVEALS THAT TOXIC WASTE SITES CONTINUE TO BE VIEWED AS THE NUMBER ONE ENVIRONMENTAL CONCERN OF OUR CITIZENS. THIS IS EVIDENCED VIRTUALLY EVERY DAY BY THE LARGE NUMBER OF PEOPLE WHO PARTICIPATE IN OUR COMMUNITY RELATIONS PROGRAMS AND WHO CONTACT THE AGENCY FOR ANSWERS. I FEEL IT IS IMPORTANT FOR EPA TO BE RESPONSIVE, RESPONSIBLE AND OPEN TO THE PUBLIC. IF CONFIRMED AS ASSISTANT ADMINISTRATOR, I INTEND TO PLACE A HIGH PRIORITY ON WORKING EFFECTIVELY WITH THOSE CITIZENS AND WITH YOU, THEIR REPRESENTATIVES IN CONGRESS. HAZARDOUS WASTE ISSUES ARE OFTEN FRIGHTENING AND OVERWHELMING TO CITIZENS. WE MUST FOCUS ON HELPING CITIZENS BETTER UNDERSTAND THE RISKS POSED BY HAZARDOUS WASTES AND THE PROGRAMS WE ARE IMPLEMENTING TO MANAGE THEM PROPERLY.

I WILL CONTINUE TO SUPPORT FULL IMPLEMENTATION OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT. I INTEND TO ENHANCE THE INFRASTRUCTURE SET UP AT THE LOCAL LEVEL TO SUPPORT CONTINGENCY PLANNING FOR RESPONDING TO CHEMICAL ACCIDENTS, AND TO ALLOW ALL CITIZENS ACCESS TO INFORMATION ABOUT THE PRESENCE AND

EMISSIONS OF HAZARDOUS CHEMICALS IN THEIR COMMUNITIES. PROVIDING GUIDANCE AND SUPPORT TO STATE EMERGENCY RESPONSE COMMISSIONS AND LOCAL EMERGENCY PLANNING COMMITTEES IS A KEY ELEMENT I FULLY SUPPORT IN ORDER TO CONTINUE THE MOMENTUM ALREADY GENERATED BY THIS GROUNDBREAKING PROGRAM.

I BELIEVE THAT STRATEGIES MUST BE DEVELOPED AND IMPLEMENTED WHICH INSURE THAT ACCURATE INFORMATION IS SHARED ON A REGULAR BASIS. MOREOVER, I PLEDGE TO SEE THAT MECHANISMS ARE IN PLACE TO FACILITATE EFFECTIVE TWO-WAY COMMUNICATION OF CITIZENS' CONCERNS TO THE AGENCY.

AT THE SAME TIME, I BELIEVE THAT OUR RELATIONSHIP WITH YOU AND YOUR COLLEAGUES IN THE HOUSE OF REPRESENTATIVES NEEDS TO BE STRENGTHENED. I UNDERSTAND FULLY THAT AS MEMBERS OF CONGRESS, YOU AND YOUR STAFFS ARE OFTEN ON THE FRONT LINES OF ACTION WHEN A COMMUNITY HAS PROBLEMS. ACCORDINGLY, I WANT TO WORK CLOSELY WITH YOU IN THESE SITUATIONS, AS WELL AS ON A REGULAR BASIS, SO THAT TOGETHER WE MAY PREVENT SOME SITUATIONS FROM REACHING CRISIS PROPORTIONS. I AM COUNTING ON YOUR EXPERTISE AND ADVICE, SHOULD I BE CONFIRMED.

TURNING TO RCRA, I WANT TO ASSURE YOU THAT I INTEND TO PLAY A KEY ROLE WITHIN THE ADMINISTRATION IN THE RCRA REAUTHORIZATION PROCESS, SHOULD THE SENATE CONFIRM ME. A HIGH LEVEL INTERNAL EPA TASK FORCE IS ALREADY MEETING AND I EXPECT TO HAVE SIGNIFICANT

INPUT. AS YOU KNOW, THERE ARE SEVERAL BILLS BEFORE CONGRESS THAT ADDRESS WASTE MANAGEMENT WHICH MERIT CONSIDERATION DURING THE REAUTHORIZATION OF RCRA, AND I INTEND TO BE RESPONSIVE TO CONGRESS IN WORKING TOWARDS SUCH REAUTHORIZATION. I ALSO INTEND TO WORK CLOSELY WITH AGENCY AND CONGRESSIONAL STAFF TO REVIEW WHERE WE HAVE BEEN AND TO SET A COURSE FOR THE FUTURE.

UNDER BILL REILLY, "POLLUTION PREVENTION" IS MORE THAN JUST A CATCHY PHRASE. IT STANDS FOR AN AGENCY-SIDE OBJECTIVE WHICH CUTS ACROSS PROGRAM LINES, AND IS BUILT INTO PRACTICALLY EVERY INITIATIVE THE AGENCY HAS. I SHARE ADMINISTRATOR REILLY'S VIEW THAT WASTE MINIMIZATION IS THE KEY TO AN EFFECTIVE LONG-TERM RESPONSE TO THE NATION'S WASTE GLUT. IT COVERS ALL WASTE TYPES -- HAZARDOUS, INDUSTRIAL, MUNICIPAL AND LARGE VOLUME WASTES SUCH AS MINING AND OIL AND GAS WASTES. IT IS MY HOPE THAT WASTE MINIMIZATION WILL REDUCE THE NEED FOR FUTURE REGULATION.

AS ASSISTANT ADMINISTRATOR, I WILL ENCOURAGE SOURCE REDUCTION FOR ALL TYPES OF WASTE; SEEK REDUCTION IN TOXICITY AND HAZARDOUS CONSTITUENTS IN WASTE STREAMS AND RETHINK HOW WE MANUFACTURE PRODUCTS THAT WILL LATER CONTRIBUTE TO WASTE STREAMS.

I WILL ALSO MEET THE CHALLENGES WE FACE IN SOLID WASTE REDUCTION AND RECYCLING USE BY SUBSTANTIALLY INCREASING RECYCLING OF ALL TYPES OF MATERIALS AND WASTE. I WILL WORK CLOSELY WITH

BOTH THE INDUSTRY AND THE STATES TO IMPROVE MARKETS FOR SECONDARY MATERIALS, WHICH IS KEY TO THE SUCCESS OF RECYCLING.

I WILL ALSO CALL FOR ADDITIONAL STUDY OF MUNICIPAL SOLID WASTE. LAST YEAR, EPA ISSUED ITS AGENDA FOR ACTION ON MUNICIPAL SOLID WASTE. THAT AGENDA ESTABLISHED THE AGENCY'S COMMITMENT TO SOURCE REDUCTION AND RECYCLING AS A CRITICAL TOOL IN RESOLVING THE NATION'S GARBAGE DILEMMA.

EPA HAS ACCOMPLISHED A GREAT DEAL IN THESE PROGRAMS OVER THE PAST FEW YEARS. WE HAVE SEEN REGULATORY AND MANAGEMENT FRAMEWORKS PUT IN PLACE WHICH SERVE BOTH TO PREVENT RELEASES TO THE ENVIRONMENT AND TO CLEAN UP RELEASES FROM PAST AND CURRENT PRACTICES. THE NEW EMPHASIS ON WASTE MINIMIZATION WILL FURTHER ASSIST IN ACHIEVING OUR MUTUAL GOALS FOR PROTECTING HUMAN HEALTH AND THE ENVIRONMENT.

MOST IMPORTANTLY, I WOULD DRAW UPON EXISTING STUDIES AND ANALYSES TO DEVELOP A RCRA MANAGEMENT AND IMPLEMENTATION STUDY. AS MEMBER OF CONGRESS, YOU ARE WELL AWARE OF SOME OF RCRA'S PROBLEMS: THE SLOW PLACE OF PERMITS; DIFFICULTIES IN ENFORCEMENT; LOW COMPLIANCE RATES; AND THE BURGEONING CORRECTIVE ACTION PROGRAM. SUCH A STUDY COULD ADDRESS THE PROBLEMS AFFECTING THE PACE OF THE PROGRAM AND WHAT COULD BE DONE TO ADDRESS THESE CONCERNS.

In the meantime, I am committed to working to meet th. RCRA deadlines in current law. If confirmed, I will assign high priority to timely issuance of regulations wherever possible and to keep Congress apprised of delays and reasons for delays. Deadlines are something that I take seriously. If confirmed, I will review and track closely, and do everything I can to meet the goals set by statute to assure that the Agency continues to show stready, tangible progress in cleanups.

Let me mention another of OSWER's primary challenges. The underground storage tank program faces many of the same problems of Superfund sites, but we have taken a somewhat different approach to their solution. From the outset, we have sought to develop and support state programs, rather than building an extensive federal staff. I plan to continue this approach in cleaning up problems from existing underground tanks and preventing future tank releases.

It is clear that EPA has a tremendous amount of work ahead under Superfund and RCRA. I am ready to work with the Members of Congress as we turn our attention to whether additional categories of waste require more rigorous environmental controls and which provisions of the existing system require mid-course corrections.

I am already impressed with the caliber of staff in place at Headquarters and the Regions charged with these complex tasks. The Agency also has very strong and capable leadership in William Reilly and Hank Habicht, and strong presidential leadership in George Bush.

I believe that these factors, combined with a bipartisan sense of urgency and environmental commitment here on the Hill, have created a climate to forge ahead with a strong agenda for Superfund and RCRA.

Mr. Chairman, I appreciate the opportunity to present these remarks and I will be pleased to respond to your questions. Thank you very much.

DON R. CLAY

Don R. Clay has served the Federal government in top management positions for the past 18 years. He was the Acting Assistant Administrator for Air and Radiation at the U.S. Environmental Protection Agency for one year. Before assuming this position, he was the Deputy Assistant Administrator for Air and Radiation.

From 1981 to 1986, Don served as Director for the Office of Toxics Substances in EPA where he was charged with implementing the Toxic Substances Control Act. While there, he led the development of the Federal position on the regulation of biotechnology. In 1983, following a period of great turmoil within the Agency, Don was appointed Acting Assistant Administrator for the Office of Pesticides and Toxics Substances, a position in which he served for nearly one year. In recognition of his achievements, he received the Administrator's Award for Excellence.

Before coming to EPA, he held a series of senior level positions at the Consumer Product Safety Commission, including that of the Associate Executive Director for the Engineering and Health Section. Prior to this, he was Deputy Assistant Commissioner for Planning and Evaluation at the Food and Drug Administration.

Don considers himself a professional manager, a role he finds challenging and essential to environmental regulation. He has received several awards for managerial excellence during his career, including the Presidential Distinguished Executive Award for Sustained Extraordinary Accomplishments in Management, 1988; and the Presidential Meritorious Executive Award, 1987. He is a charter member of the Senior Executive Service.

He is a registered professional engineer and holds two degrees in Chemical Engineering from Ohio State University.

DON R. CLAY

5305 Albemarle St.
Bethesda, MD 20816
(301) 320-5698

U.S. Environmental
Protection Agency
Washington, D.C.
(202) 382-7403

EXPERIENCE

DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION
U.S. Environmental Protection Agency (1986 to present)

Serve as highest level career manager in Office of Air and Radiation, an organization of 880 employees and budget of $250 million (including a State Grant Program of $99 million). Also maintain policy and programmatic control over an additional 670 people in the ten regions.

Set National policy on air and radiation control program, primarily Clean Air Act issues incorporating state attainment policy, air toxics, and motor vehicle emission standards, as well as international issues involving acid rain and global climate change.

Serve on a variety of agency task forces, including those on ozone nonattainment and air toxics, as well as EPA's Risk Assessment and Risk Management Council. Chaired the Cancer Subcommittee of the Agency's Comparative Risk Project.

Received the Presidential Distinguished Executive Award for Sustained Extraordinary Accomplishments in Management, 1988; the Presidential Meritorious Executive Award, 1987. Named in the December, 1988 issue of Government Executive as one of the government's twelve best executives.

From 1988 to 1989, served as Acting Assistant Administrator of this office, directly under the EPA Administrator.

DIRECTOR, OFFICE OF TOXIC SUBSTANCES
U.S. Environmental Protection Agency (1981-1986)

Directed an office of over 500 people and a contract program of more than $30 million in implementing the Toxic Substances Control Act.

Responsible for the development of a regulatory scheme for biotechnology, and the implementation of a chemical review system.

Received the Administrator's Award for Excellence, 1983.

Served as Acting Assistant Administrator for eight months.

DEPUTY ASSOCIATE EXECUTIVE DIRECTOR, ENGINEERING SCIENCES
U.S. Consumer Product Safety Commission (1976-1981)

Managed technical staff of up to 100 engineers and toxicologists, a contract budget of up to $3 million, and operating funds of $300,000.

Developed policy and regulations for a wide variety of consumer products including tris-treated sleepwear, formaldehyde, and kerosene heaters.

Active in the Interagency Regulatory Liaison Group, a consortium of EPA, FDA, OSHA and CPSC.

DIRECTOR, OFFICE OF PROGRAM PLANNING AND EVALUATION
U.S. Consumer Product Safety Commission (1974-1976)

Directed all agency-wide planning, budgetary and evaluation activities. Tied agency planning to the budget process.

DEPUTY ASSISTANT COMMISSIONER FOR PLANNING AND EVALUATION
U.S. Food and Drug Administration (1972 - 1974)

Directed planning and evaluation activities, also serving as head of the agency evaluation program. Conducted long-range planning for legislative initiatives such as the Medical Device Act.

GROUP LEADER
Commission on the Organization of the Government of the District of Columbia (Nelson Commission) (1971-1972)

Performed analysis of the delivery of health services in the District of Columbia which resulted in the separation of D.C. General Hospital from the municipal government.

EXECUTIVE VICE PRESIDENT
Resource Allocation, Inc. (1970-1971)

Was founder and principal of this consulting firm, with responsibility for a variety of studies for the U.S. Navy.

PROGRAM DIRECTOR
Research Management Corporation (1968-1970)

Directed a variety of study projects, including long-range planning for the U.S. Army and the evaluation of programs for the Office of Economic Opportunity.

ENGINEER IN PRIVATE INDUSTRY (1960-1968)

Served as program manager, project leader and chemical engineer in private industry, including the Monsanto Company plastics division.

MEMBERSHIPS

American Institute of Chemical Engineers
Air Pollution Control Association
Charter Member of the Senior Executive Service (SES)
American Association for the Advancement of Science
Harvard Business School Club of Washington
Registered Professional Engineer - Ohio
Tau Beta Pi

EDUCATION

Masters of Science, 1960, Ohio State University
Bachelors Degree in Chemical Engineering, 1960,
Ohio State University

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: CLAY (Last) Don (First) Richard (Middle)

Position to which nominated: Assistant Administrator for Solid Waste and Emergency Response

Date of Nomination:

Date of birth: June 26, 1937 (Day) (Month) (Year) **Place of birth:** Washington Court House, Ohio

Marital status: Married **Full name of spouse:** JoAnn Elizabeth Smith Clay

Name and ages of children:

Rebecca Ann Clay	June 14, 1962
Jeffrey Markham Clay	March 17, 1966

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Ohio State University		B.A.	1960
Ohio State University		M.S.	1960

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

5/88 - 5/89 — Acting Asst. Admin. for Air & Radiation — EPA — Washington,D.

6/86 - Pres. Deputy Assist. Admin. Office of Air and Radiation — EPA — Washington, D.C.

X/83 - X/84 — Acting Asst. Admin. for Pesticides and Toxic Substances — EPA — Washington, D.C.

8/81 - 6/96 — Director Office of Toxic Substances — EPA — Washington, D.C.

8/79 - 8/81 — Deputy Associate Executive Director, Engineering & Science — Consumer Products Safety Commission — Washington, D.C.

12/76 - 8/79 — Acting Associate Executive Director, Engineering & Science — Consumer Products Safety Commission — Washington, D.C.

Employment record—Continued

3/74 - 12/76 -- Supv. Operations Research Analyst -- CPSC -- Bethesda, MD

6/72 - 3/74 -- Supv. Operations Research Analyst -- FDA -- Rockville, MD

2/72 - 6/72 -- Program Analysis Officer -- FDA -- Rockville, MD

Senior Systems Analyst -- Commission on the Organization of
5/71 - 2/72 -- Gov't of District of Columbia -- Washington, D.C.

5/70 - 5/71 -- Executive Vice Pres. -- Resource Allocations, Inc., Arl. VA

4/68 - 5/70 -- Program Director -- Resource Mgmt. Corp. -- Bethesda, MD

11/65 - 4/68 -- Project Manager -- Davidson, Talbird & McLynn, Inc.

11/63 - . -- Associate Staff -- Operations Research, Inc. Silv. Spg., MD

4/63 -- 11?63 -- Project Engineer -- Monsanto Co. -- Springfield, MA

4/61 -- 4/63 -- ADP Plans & Operations Officer -- US Army -- El Paso, TX

8/60 - 4/61 -- Project Engineer -- Monsanto Co. - Springfield, MA

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Distinguished Presidential Rank Award -- 1988

Presidential Meritorious Executive Award -- 1987

Administrator's Award for Excellence -- 1983

Tau Beta Pi -- Engineering -- Honorary 1960
(Selected for membership)

Chemstrand Fellow Recipient -- 1960

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Air and Waste Management Association		1986 to present
American Institute of Chemical Engineers		1982 to present
American Running and Fitness Association		1984 to present
Senior Executive Association		1985 to present
University Club		1971 to present

Qualifications: State fully your qualifications to serve in the position to which you have been named.

SEE ATTACHED STATEMENT

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I am currently with EPA and being nominated for another position within the Agency.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

As a career member of the SES, I would have retreat rights into government Senior Executive Service.

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes

QUALIFICATIONS

Don Clay

I have served as a career manager of three government regulatory agencies over the last 17 years. Through my tenure at the Food and Drug Administration, the Consumer Products Safety Commission and at the Environmental Protection Agency the issues, problems and challenges have all been quite different, but the common thread has been my commitment to protect public health and the environment.

This is a commitment which I have taken quite seriously, and I believe that the background and experience that these positions have afforded me have provided ideal "on the job training" for the difficult duty that lies ahead as Assistant Administrator for the Office of Solid Waste and Emergency Response, (OSWER) should I be confirmed.

Specifically, while at EPA, I have served as the Acting Assistant Administrator for the Office of Pesticides and Toxic Substances in 1983, following period of great turmoil and loss of public confidence in EPA. I was pleased to have an opportunity to apply sound management technique and solid organizational practice to help improve both the morale of EPA employees and public perceptions about the agency as well. This service was recognized with the Administrator's Award for Excellence.

Over the past few years, I was awarded the Presidential Meritorious Executive Award (1987) and the Distinguished Presidential Rank Award (1988) for continuing excellence in goverment management.

More recently, I have served as Acting Assistant Administrator for the Office of Air and Radiation, and was honored to have helped set the stage for Reauthorization of the Clean Air Act Amendments. With RCRA Reauthorization on the horizon, this experience would prove invaluable if I am confirmed as the Assistant Administrator for OSWER.

These experiences, along with playing an active role on the Risk Assessment Council, the Risk Management Council, as well as the Executive Resources Performance Review Board, have given me an in-depth look at some of the problems and issues facing the Office of Solid Waste and Emergency Response in the near term. As an added bonus, I feel that my expertise and advance training in Chemical Engineering affords a comfort level and understanding of some of the technical complexities which impact regulation that will aid in timely, informed decision making.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

None

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None

3. Are any assets pledged? (Add schedule)

None

4. Are you currently a party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No audits

Potential conflicts of interest

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

I have been an employee of the Federal Government for the past 18 years.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I do not believe I have any real or potential conflicts of interests.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

If confirmed, I intend to comply with all conflict of interests regulations during my time in the position and employment after serving in the position.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

None -- I have been covered by the Hatch Act, during my entire government tenure.

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

(SEE ATTACHED LIST)

A SAMPLING OF OFFICIAL SPEECHES AND TALKING POINTS

SPEECH: April 11, 1989 -- Los Angeles Chamber of Commerce -- Washington, D.C. -- "Approaches Being Pursued by EPA in Absence of New Clean Air Act"

SPEECH: March 13, 1989 -- National League of Cities -- Washington, D.C. -- "Administration Perspective on Legislation to Reauthorize Clean Air Act"

TALKING POINTS: March 1989 -- Global Climate Policy Options

SPEECH: December 1, 1988 -- Presidential Management Interns -- Washington, D.C. -- "Office of Air and Radiaiton Programs"

TALKING POINTS: September 29, 1988 -- Business Roundtable -- New York City -- "Global Climate Change"

SPEECH: September 26, 1988 -- STAPPA/ALAPCO Fall Meeting -- Tucson, Arizona -- "Views on Current and Future Activities in Federal Air Pollution Control"

TALKING POINTS: September 12, 1988 -- American Petroleum Institute -- Washington, D.C. -- "Clean Air Act"

SPEECH: November 20, 1987 -- American Petroleum Institute -- Hartford Connecticut -- "EPA's New Policy on Ozone and Carbon Monoxide"

Additional Matters

1 If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

No

2 Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3 Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

Don Clay) ss. being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 13th day of October, 1989

Notary Public

My Commission Expires March 14, 1994

FRIENDS OF THE EARTH
Environmental Policy Institute
OCEANIC SOCIETY

October 24, 1989

Honorable Quentin N. Burdick
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Burdick:

We would like to endorse the nomination of Don R. Clay to be Assistant Administrator for the Office Solid Waste and Emergency Response.

We have worked with Mr. Clay for a number of years in his previous positions at the U.S. Environmental Protection Agency. We have found him to be a receptive, thoughtful listener to our concerns. He has always been candid and fair in his comments and recommendations. He has provided helpful guidance in seeking information and data on various environmental problems.

We look forward to working with him in his new position at the Office of Solid Waste and Emergency Response.

Sincerely,

Fred Millar

Dr. Fred Millar
Director
Toxics Project

218 D Street, SE
Washington, DC 20003
202 544 2600
202 543 4710 (fax)
650 192 5483 (telex)
foedc (EcoNet ID)

Senator **Burdick**. Mr. Strock.

STATEMENT OF JAMES M. STROCK, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE MONITORING, ENVIRONMENTAL PROTECTION AGENCY

Mr. **Strock**. Thank you, Mr. Chairman. With your leave I would also appreciate the opportunity to have longer remarks placed in the record, if you would, please, and I would read a shorter statement at this time.

Senator **Burdick**. Without objection, so ordered.

Mr. **Strock**. Mr. Chairman, members of the committee, I am honored to appear before you today as the President's nominee for the position of Assistant Administrator for Enforcement and Compliance Monitoring at the Environmental Protection Agency. It is a particular pleasure to appear before this Committee, for which I have great respect and affection.

I would like to state the fundamental point up front: the Bush Administration—and most emphatically, the President himself—is firmly committed to vigorous and effective enforcement of this Nation's environmental laws. Administrator Reilly has placed environmental enforcement among his highest priorities. By appointing Henry Habicht, former Assistant Attorney General for Land and Natural Resources, as Deputy Administrator, the Administration has further signalled that enforcement concerns will be paramount in the day-to-day management of the agency.

By temperament, experience, and conviction, I am entirely in accord with President Bush's and Administrator Reilly's emphasis on environmental enforcement. I pledge to you that I will devote all of my energy to invigorating EPA's enforcement program. It is my firm belief that in helping to achieve the Bush Administration's goals for enforcement, I will also be helping to further the work of this committee and to meet the expectations of the American people.

If confirmed, I intend to work on several fronts simultaneously to invigorate EPA's enforcement program.

First, I will serve as an advocate for vigorous enforcement within the agency, within the Executive Branch, the Congress, and before the public. As the name of this office implies, enforcement comes first, and then compliance will follow. In turn, this means not only a strong civil program, but continued growth of EPA's criminal enforcement efforts which—as shown by the recent convictions at Aberdeen Proving Grounds in Maryland—can have an extraordinary deterrent impact.

Second, I will strive to enhance the working relationships among the various components of our Federal system to achieve effective environmental enforcement. EPA must leverage its efforts through coordination with States, localities, and citizen groups. And with respect to our fellow Federal agencies, we must make good on the shared commitment of the President and the Congress to assure that the Federal Government's own role as a polluter in the past is resolved in the public interest.

Third, I will strive to improve EPA's joint efforts with the Department of Justice to develop cases with maximum national precedential effect, deterrent value, and environmental impact.

Fourth, I intend to improve the management of the Agency's enforcement program, in particular making every effort to sharpen and define the relative roles of the enforcement office, the EPA technical offices which support enforcement, the National Enforcement Investigations Center, and the 10 regional offices which implement national policy across the country. I will also apply a special scrutiny to personnel questions, such as those identified in the Lautenberg-Durenberger Superfund Report, to help improve recruitment and retention of the agency's outstanding career enforcement workforce.

Fifth, I will make every effort to assure that enforcement concerns are taken into account early and explicitly in the development of Agency regulatory and legislative proposals.

Sixth, I will work to improve the ability of the Agency to communicate in the enforcement area. This, in turn, has two components.

First, we must send a clear message so that the American people understand that environmental degradation is not only unacceptable as a business practice, but constitutes an assault upon our shared notions of responsible citizenship. In recent months the Agency has initiated targeted action against violators of asbestos regulations and water pretreatment programs. The number of Superfund unilateral orders mandating polluter cleanups is rapidly rising as a result of Administrator Reilly's 90-Day Superfund Report. The overall amount of fines and jail time imposed is at an all-time record level on the criminal side overall. This Administration is, and will continue to be, committed to sending a strong message through vigorous enforcement.

At the same time, effective communication includes the ability to listen. I would intend to consult frequently with the Congress, State and local regulators, and environmental and industry groups, so that the enforcement efforts could be improved.

In sum, I am committed to working to the best of my ability to vigorously enforce the Nation's environmental laws, as expected by the President, the Congress, and the public as a whole.

Mr. Chairman, I appreciate the opportunity to present my statement this morning. I am grateful for your goodwill, and I would like to try to answer as best I can any questions that you might have.

Senator **Burdick**. Thank you.

Do you know of any matters which you may not have already disclosed which might place you in any conflict of interest if you are confirmed to this position?

Mr. **Strock**. No, Mr. Chairman.

Senator **Burdick**. Are you prepared, at the request of any duly-constituted committee of the Congress, to appear in front of it as a witness?

Mr. **Strock**. Yes, sir.

Senator **Burdick**. I believe a strong bill to enforce supercedes institutional structure when it comes to good environmental enforcement. Nevertheless, aside from possible short-term disruptions, please provide us with a short justification as to why the Superfund office or any program office has a technical enforcement office separate from the Office of Enforcement and Compliance Monitoring.

Mr. STROCK. I would prefer for Mr. Clay to answer that, but I will try.

Senator BURDICK. You can both answer it.

Mr. STROCK. My understanding of the theory at the time that was done, several years ago, is that the programs are best suited in theory to develop the information and the background data that eventually become the backbone of enforcement cases. Further, I think it is felt at least by some of the programs that by having the so-called technical enforcement people in their offices, it provides less disruption to their fulfilling their other tasks, as well.

I would like to say that as a person trying to learn about these programs myself, I have been very much involved in exploring that issue. I would hope to continue to do so, working with this Committee on a series of organizational questions. I know the Agency is looking forward to the oversight hearing of Senator Reid and Senator Lieberman on these topics.

On the specific case of Superfund, the 90-Day Report includes a directive that by next summer, I believe, the relative roles of the various offices dealing with Superfund—in the Superfund Program, the enforcement office, and the Department of Justice—will be reviewed and reexamined.

Senator BURDICK. Do you have an addendum?

Mr. CLAY. No, I would just like to supplement if I could, Mr. Chairman.

I think it is important that you keep enforcement back with the national program manager. Certainly in my case, I have some sites that are "fund lead" and some that are "enforcement lead," and I think that in the end if I am going to do enforcement first, I have to have the capacity to do that.

I have also found over my years of experience with the agency that when you have the enforcement with the people who are writing the rules, you get much better coordination and feedback. If you don't watch out, the people who write the rules won't give nearly the attention to how they are going to be enforced when they are in disparate organizations, so I think it is very important that you do in fact have them integrated so that when they are developing the rules and regulations you give a lot of thought to how they are going to be enforced.

So I think it is important to keep them close together and close to the program manager. In fact, if Superfund doesn't work in the end, I want you to hold me accountable, not bring up a series of people to be held accountable. If it doesn't work, then I'm the guy you want to talk to.

Thank you.

Senator BURDICK. Please state your position regarding enforcement at Federal facilities. Do you agree with the unitary executive concept?

Mr. STROCK. My personal position, because up to this time, of course, I have not worked on the Administration's deliberations on this, is that to the maximum extent possible, Federal facilities should be treated in the same manner as private violators.

With respect to the specific legislation being considered, H.R. 1056 and S. 1140, it is my understanding that the Administration is developing positions to present testimony up here in very short order. I would definitely like to commit this morning that whatever tools the Congress provides to EPA, I would be a very strong advocate for using those to the greatest possible extent in whatever circumstances are appropriate.

Senator **Burdick**. Mr. Reid.

Senator **Reid**. Thank you, Mr. Chairman.

I was talking yesterday to a Nevada Federal judge. He indicated that he was calling me about the pay raise that is contemplated for Federal judges, whether there might or might not be one. He indicated to me that it didn't matter to him, he liked his job so much that even though it made it difficult with a family and all, he has no intention of leaving.

The reason I mention that, Mr. Chairman, is that I think the two gentlemen who are before the committee today are indicative of the same type of person who spoke to me from Nevada yesterday.

The type of people who are laced all through our Government are people like you two men. Either one of you could be making a lot more money on the outside. There is a tremendous shortage of scientists, engineers. You could go anyplace with your background and experience and make more money than you are going to make now.

Certainly you, Mr. Strock, with your outstanding academic background, could make a lot more money in a lot of different places than you will working for the Federal Government.

I wish you both well in the Federal Government. I say that because you are the type of people that we need in Federal Government. Having said that, I look forward to working with you with my subcommittee, and I hope that in the years to come I will still be as complimentary of two very well-qualified people as I am now.

Mr. Strock, do you believe that it would be proper for the President of the United States to be involved in specific enforcement decisions of the EPA?

Mr. **Strock**. Well, in some instances where there is a conflict between agencies, it may be inevitable that the President would have to become involved in some way or other. I would hope that those kinds of situations—for example, a national security question would arise in a very small number of cases. I would also hope that, as a practical matter, putting aside what may happen to the relevant laws in the short term, the other tools the Government has in Federal facilities cases—that is, potential actions against Government contractors or the imposition of potential criminal liability—would avoid that kind of issue being raised that high in very many cases.

Senator **Reid**. Do you believe that Federal budgetary policies should influence EPA's enforcement policies at Federal facilities?

Mr. **Strock**. Speaking personally—that's a decision for the Congress and the President to make, perhaps in some other context. That cannot be, in my opinion, a consideration that should be taken into account at the level I would hope to be in, because my sole concern would be to present the enforcement picture and to enforce as vigorously as possible. I wouldn't try to influence how the appropriations process would work or the kinds of agreements the Congress and the President might make in other contexts.

Senator **Reid**. You understand that one of the big problems that we have in our Government today deals with different types of waste that, for various reasons, have been allowed to accumulate. For example, at some of our nuclear facilities there are problems costing, no one knows how much money to clean those facilities up. There are budgetary problems that we face.

What you are saying, as I understand your answer, is that those types of decisions would have to be made by someone other than you?

Mr. **Strock**. Yes, sir, that's how I would view my position if I am confirmed to this position. I would view that more appropriate for higher level decision-makers.

Senator **Reid**. Do you believe that the Environmental Protection Agency should take into account the impact of the enforcement of Federal environmental law upon, for example, the President's political fortunes when determining which enforcement actions to take?

Mr. **Strock**. No.

Senator **Reid**. Thank you, Mr. Chairman.

Senator **Burdick**. Senator Lieberman.

Senator **Lieberman**. Thank you, Mr. Chairman.

Just a few questions for you, Mr. Strock.

I appreciate your answers to the questions about Federal facilities. Hank Habicht in his confirmation hearing dealt with these pretty directly and reassured the committee that there would be aggressive enforcement at the facilities. I think that's critical.

I'm sure you are familiar with the GAO report on EPA which recently made several criticisms about enforcement policy. One was that the headquarters needs to monitor and hold the Regions more accountable for meeting measures that are prescribed in headquarters enforcement policies. I wondered if you have had time to review the report and consider the operation, and do you agree with its conclusions? And if so, what do you intend to do about it?

Mr. **Strock**. I have not reviewed that specific report but I have thought a great deal about the issue you are speaking of. I know that it is being considered at the highest level in the agency, both by the Administrator and by the Deputy. In fact, next week at your oversight hearing I think he will specifically address to that issue.

I think the overall recognition is that to some extent, the enforcement office is understandably and properly held accountable over some areas where its authority is perhaps too limited to achieve the results being sought by the Congress and others. I would certainly hope to have the opportunity to work very closely with you and this committee on those issues.

Senator **Lieberman**. Okay. I appreciate that.

Another matter raised by the GAO report and also by the EPA Inspector General is the apparent lack of follow-up, up until this time, on consent decrees and orders to determine whether the defendants are really complying with the terms of those decrees. Do you have any recommendations that you will follow?

Mr. Strock. Yes, Senator. In fact, I have read that one very carefully. That one, again, has reached the attention of the very highest level of the agency, particularly with Hank Habicht, the Deputy Administrator, to develop specific tracking mechanisms to deal with this, hopefully in a very specific time frame. I would like to report back to you on that in a specific way, if that would be agreeable, in several weeks.

I would also like to say that Administrator Reilly—and this is in a more general sense with the IG reports and GAO reports—has made it very plain that the Agency is going to work in a very cooperative way with these reports, and try to use them as management aids, in effect. If confirmed, I would hope to ensure that we have specific tracking plans for all the recommendations, either following them or, if they are not going to be followed for some reason, explicitly discussing why.

Senator Lieberman. Good.

Finally, let me ask you a more general question which I used to ask myself when I was Attorney General of Connecticut. What standards should we apply when evaluating our enforcement performance? By your nod I am sure you know what I am talking about. Is it simply how many cases we bring, what level of fines we achieve? Or is there something else we should be asking ourselves?

Mr. Strock. Well, Senator, I know you have worked a great deal on these with the National Association of Attorneys General and have taken a leadership role for quite some time.

The particular position that EPA finds itself in in recent years, as you are aware, is that the management systems put into place in the early 1980s to resuscitate the program have been successful in generating large numbers of case referrals and administrative actions. However, at the same time there is a concern that environmental improvements and results are not well measured. There is also a concern that in relying on numbers as the index of success, you could actually have negative incentives that would lead folks not to take the best cases.

Clearly this issue is a high priority. Again, I hate to defer things, but I know the Deputy will want to speak at length next week about having an open process involving yourself, other members of this Committee, your staff, and others to help the Agency to redefine success, if it is possible, to better take into account environmental improvement in the short term.

Senator Lieberman. Okay. I think your comments are right on target. I really look forward to working with you.

In my opinion, you and Hank Habicht are the point people in this operation because without strong enforcement, so much of the rest of what EPA is setting out to do is just not going to work. So much of what we're talking about now, for instance in the Clean Air Act, is going to be much less effective unless people understand that there is a strong enforcement component.

So I welcome you and I truly look forward to working with you in the years ahead.

Mr. Strock. Thank you, Senator.

Senator Burdick. The hearing record will be open for one week to receive questions from members.

That concludes the hearing today. The meeting is adjourned.

[Whereupon, at 10:43 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Mr. Strock's written statement, résumé, and responses to a committee questionnaire and additional questions from Senator Lieberman follow:]

STATEMENT OF JAMES M. STROCK
NOMINEE FOR
ASSISTANT ADMINISTRATOR FOR ENFORCEMENT
AND COMPLIANCE MONITORING
U. S. ENVIRONMENTAL PROTECTION AGENCY
TO THE U.S. SENATE
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
NOVEMBER 8, 1989

Mr. Chairman, Members of the Committee, I am honored to appear before you today as the President's nominee for the position of Assistant Administrator for Enforcement and Compliance Monitoring at the Environmental Protection Agency. It is a particular pleasure to be before this Committee, for which I have great respect and affection.

I would like to state the fundamental point up front: the Bush Administration -- and, most emphatically, the President himself -- is firmly committed to vigorous and effective enforcement of this nation's environmental laws. Administrator Reilly has placed environmental enforcement among his highest priorities. By appointing F. Henry Habicht, former Assistant Attorney General for Land and Natural Resources, as Deputy Administrator, the Administration has further signalled that enforcement concerns will be paramount in the day-to-day management of the Agency.

I am honored and grateful to President Bush and Administrator Reilly for choosing me to be part of their team. By temperament, experience, and conviction, I am entirely in accord with their emphasis on environmental enforcement. I pledge to you that I will devote all of my energy to invigorating EPA's enforcement program. It is my firm belief that in helping to achieve the Bush Administration's goals for enforcement, I will also be helping to further the work of this Committee, and to meet the expectations of the American people.

I have devoted the majority of my working career to government service and environmental improvement. From 1983 to 1985, it was my privilege to work for then Administrator William Ruckelshaus and his Deputy, Alvin Alm. Together, these two men -- one a Republican, the other a Democrat -- worked closely with the Congress to restore the public's faith in an Environmental Protection Agency worthy of its name. I left my first tour of duty at EPA with many impressions, the foremost being that EPA's strength truly lies in its outstanding and dedicated career staff.

During the 99th Congress, in 1985-86, I had the honor of working on the staff of this Committee during one of its most productive periods. Again, I learned a great deal. Two impressions in particular remain indelible. First, while debate on some issues was spirited, any and all disagreements on points of policy were more than overshadowed by a shared commitment to environmental protection. Second, while observers might differ as to the proper theoretical balance between executive and legislative branch authority in the environmental arena, the public demand for environmental protection can best be met if there is trust and cooperation between the two branches.

Subsequent experiences have provided me with additional perspectives. My work in private law practice in Colorado gave me a sense of how Washington's rules are viewed in the workaday world of business, particularly in locations far from our nation's capital. My experience as general counsel for the U.S. Office of Personnel Management tested and tempered my views of management in a crucible of daily problem-solving. And my writing about environmental issues has reflected and refined my commitment to environmental protection.

If confirmed, I intend to work on several fronts simultaneously to invigorate EPA's enforcement program.

First, I will serve as an advocate for vigorous enforcement within the Agency, within the executive branch, before the Congress, and before the public. As the name of this office implies, enforcement comes first, and then compliance will follow. In turn, this means not only a strong civil program, but continued growth in our criminal enforcement efforts, which as shown by the recent convictions at Aberdeen Proving Grounds, can have an extraordinary deterrent impact.

Second, I will strive to enhance the working relationships between the various components of our federal system to achieve effective national environmental enforcement. EPA must leverage its efforts through coordination with states, localities, and citizen groups. And with respect to our fellow federal agencies, we must make good on the shared commitment of the President and the Congress to assure that the federal government's own regrettable role as a polluter is resolved in the public interest.

Third, I will strive to improve EPA's joint efforts with the Department of Justice, to develop cases with maximum national precedential effect, deterrent value, and environmental impact.

Fourth, I intend to work to improve the management of the Agency's enforcement program. In particular, we will make every effort to sharpen and define the relative roles of the enforcement office, the EPA technical offices which support enforcement, the National Enforcement Investigations Center, and the ten regional offices which implement national policy across the country. I will also apply a special scrutiny to personnel questions, such as those identified in the Lautenberg-Durenberger Superfund Report, to help improve recruitment and retention of the Agency's outstanding career enforcement employees.

Fifth, I will make every effort to assure that enforcement concerns are taken into account early and explicitly in the development of Agency regulatory and legislative proposals.

Sixth, I will work to improve the ability of the Agency to communicate in the enforcement area.

This has two components. First, we must send a clear message, so that the American people understand that environmental degradation is not only unacceptable as a business practice, but constitutes an assault upon our shared notions of responsible citizenship. In recent months the Agency has initiated targeted action against violators of asbestos regulations and water pretreatment programs. The number of Superfund unilateral orders mandating polluter cleanups is rapidly rising as result of Administrator Reilly's 90-Day Superfund Report. The government has recently received favorable judicial rulings relating to the imposition of treble damages for violations of Superfund cleanup orders and de mimimis settlements. The overall amount of fines and jail time imposed are at all-time record levels. This Administration is -- and will continue to be -- committed to sending a strong message through vigorous enforcement.

At the same time, effective communication includes the ability to listen. I intend to consult frequently with the Congress, State and local regulators, and environmental and industry groups, so that the enforcement efforts can be improved. Also, I will work within EPA to make better use of data reported to the Agency, including permitting and compliance records, which are often scattered amidst various offices.

Finally, I intend to imbue enforcement decision-making with an explicit concern for the future. There are many difficult and contentious questions in the environmental area, and they are best met not with a concern for "politics", but with a concern for posterity. When the proper decision is not clear, the question should be, which path will be most defensible to our children in thirty years? As Winston Churchill once said, no one among us is intelligent enough to truly divine his own interest, but even the most dull can discern their duty. In terms of enforcement, our duty is the vigorous application of the law. If approved by this Committee and confirmed by the Senate, I intend to discharge that duty to the best of my ability.

Mr. Chairman, I appreciate the opportunity to present my statement to the Committee this morning. I am grateful for your goodwill, and I will do my best to answer any questions that you might have for me at this time.

James M. Strock

Home:
1001 North Vermont #514
Arlington, VA 22201
703-525-1299

EMPLOYMENT

Acting Director and General Counsel, U.S. Office of Personnel Management. As General Counsel, I have management responsibility for full-time legal staff of 52 with budget of $2,875,000. Supervisory responsibility for administrative actions, litigation, legislative analysis, and counselling; staff responsibility to Director of Agency. Member, Senior Executive Service; Administrative Conference of the U.S. (February 1988-Present). Beginning in May 1989 I am also serving as Acting Director of OPM, pending confirmation of President Bush's designee.

Senior Associate at law firm of Davis, Graham & Stubbs, Denver, Colorado. Litigation, administrative representation, legislative representation and counselling related to environmental laws, including the Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, Safe Drinking Water Act, Clean Water Act, Clean Air Act, Endangered Species Act, Toxic Substances Control Act, Occupational Safety and Health Act. (November 1986-January 1988).

Special Counsel (1986), Associate Counsel (1985), Committee on Environment & Public Works, U.S. Senate. Worked for Senators Simpson, Domenici, Symms and Abdnor on legal and regulatory issues concerning environmental statutes. Primary focus was on Superfund Amendments and Reauthorization Act of 1986; reauthorization and amendments to the Clean Water Act; the Safe Drinking Water Act of 1986; Asbestos Hazard Emergency Response Act of 1986; Endangered Species Act; Resource Conservation and Recovery Act. (February 1985-November 1986).

Special Assistant to the Administrator, U.S. Environmental Protection Agency. Focused on legal and policy matters, including hazardous waste and water regulation, and enforcement policy, for the Administrator and Deputy Administrator. Served as Staff Representative, Cabinet Council Working Group on Toxic Torts; also chaired internal EPA working group on same subject. (June 1983-September 1984; November 1984-January 1985).

Senior Political Analyst, Issues and Research Division, Reagan-Bush 84. (September-November 1984).

Special Consultant to the Office of the Majority Leader, U.S. Senate. (August 1982-June 1983).

Law Clerk, Fulbright & Jaworski, London, England. (1981-82).

Teaching Fellow, Department of Government, Harvard Univ. (1980).

Research Director (1980), Special Assistant to the Chairman (1978), Bailey, Deardourff & Associates.

Law Clerk, Holme, Roberts & Owen, Denver, Colorado (June 1980, Summer 1979).

Research Assistant in Legal Policy Studies, American Enterprise Institute, Washington, D.C. (1977).

Creator, Moderator, Producer of Lay It On The Line weekly television series, (WDSU-TV, NBC, New Orleans, Louisiana). Guests ranged from impressionist Rich Little to Rev. Jesse Jackson to television newsmen Garrick Utley and David Burrington. (1973-74).

EDUCATION

Harvard College	A.B., magna cum laude, 1977
Harvard Law School	J.D., 1981
Oxford University	Postgrad., 1981-82

HONORS AND AFFILIATIONS

Member, Board of Advisors, Toxics Law Reporter, Bureau of National Affairs, Washington, D.C., (1987-).

Adjunct Fellow, Center for Strategic and International Studies, Washington, D.C. (1989-).

Member, Board of Directors, Youth Service America (1988-).

American Bar Association, Ross Essay Award (1985).

U.S. Environmental Protection Agency, Special Achievement Award (1984).

Rotary International Fellowship (1981-82).

Harvard College: Phi Beta Kappa, Charles Joseph Bonaparte Scholarship (highest academic standing in Government Dept. after Junior year), etc.

James M. Strock

PUBLISHED WRITING

"Coming to Terms with the Compensation Conundrum", 71 *ABA Journal* 68 (September 1985); 57 *Journal Water Pollution Control Federation* 981 (October 1985); 131 *Congressional Record* S12001 (daily edition, September 25, 1985).

"The Domenici-Simpson-Bentsen Amendments to H.R. 2005" (article on Senate amendments to Superfund concerning pre-litigation "settlement policy"), 10 *Chemical Waste Litigation Reporter* 743 (November 1985).

"The Common Law Under Challenge: Politics, Science and Toxic Torts", in Schnare and Katzman (eds.), *Chemical Victimization--Legal and Medical Uncertainties* (forthcoming, Greenwood Press, 1989).

"The Congress and the President: From Confrontation to Creative Tension," 17 *Environmental Law Reporter News and Analysis* 10006 (Environmental Law Institute, January 1987).

With David O. Ledbetter, Guest Editorial on Superfund Settlement Policy, 14 *Chemical Waste Litigation Reporter* 659 (September 1987).

"Superfund Amended: A New Emphasis on the Public Health," 16 *Colorado Lawyer* 1845 (October 1987); 2 *Toxics Law Reporter* 648 (November 1987).

"Settlement Policy Under the Superfund Amendments and Reauthorization Act of 1986," 58 *University of Colorado Law Review*, 599 (1988); 3 *Toxics Law Reporter* 184 (July 1988).

"Adjusting Water Allocation Law to Meet Water Quality and Availability Concerns in a Warming World," in *Proceedings of the First North American Conference on Preparing for Climate Change: A Cooperative Approach* 382 (Government Institutes, 1988).

Book Review: Michael Dore, *Law of Toxic Torts*, and Donald W. Stever, *Law of Chemical Regulation and Hazardous Waste*, 3 *Natural Resources and Environment* 43 (American Bar Association, May 1988).

"The Genesis of the SARA 'Innocent Landowner' Defense," *3 Toxics Law Reporter* 592 (October 1988).

"Putting Our Habitat in Order: Environmental Priorities for the Next Administration," *Policy Review*, Number 45, p. 36 (Summer 1988).

"Effects of Global Warming on International Treaty Obligations Relating to Water Rights," *Proceedings of the Second North American Conference on Preparing for Climate Change: A Cooperative Approach* (forthcoming, 1989).

"Citizen Service: What You Can Do For Your Entitlements," Policy Review, Number 48, p. 68 (Spring 1989); also interview in The Hotline, Vol. 2, No. 103 (February 22, 1989), p. 22.

OTHER

Bar Membership: Colorado Supreme Court; U.S. District Court; Tenth Circuit Court of Appeals; American, Colorado, and Denver Bar Associations.

Volunteer Work: Big Brothers Program (1983-86); Board of Directors, Colorado Children's Legal Clinic (1987).

Political Activity: State Coordinator, Colorado Official English Campaign (Successful ballot initiative for 1988 state vote on proposed constitutional amendment; also represented Campaign in legal challenges to petitions' validity; resigned in January 1988).

Military: 1st Lt., USAR-JAGC.

Member: Theodore Roosevelt Association; World Affairs Council of Washington, D.C.

References available on request.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Strock (Last) James (First) Martin (Middle)

Position to which nominated: Assistant Administrator for Enforcement and Compliance Monitoring

Date of Nomination: August 1989

Date of birth: 19/08/56 (Day) (Month) (Year)

Place of birth: Austin, Texas

Marital status: Single

Full name of spouse: —

Name and ages of children: —

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Isidore Newman School	1970 - 1974	Diploma	1974
Harvard College	1974 - 1977	A.B.	1977
Harvard Law School	1978 - 1981	J.D.	1981
Oxford University	1981 - 1982	—	—

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Acting Director, General Counsel, U.S. Office of Personnel Management, Washington (1988-89); Associate, Davis, Graham & Stubbs, Denver, Colorado (1986-88); Special Counsel (1986), Associate Counsel (1985), U.S. Senate Committee on Environment and Public Works; Special Assistant to the Administrator, William Ruckelshaus, U.S. EPA (1983-85); Senior Political Analyst, Reagan - Bush '84 (September - November 1984); Special Consultant, Office of U.S. Senate Majority Leader (1982-83); Law Clerk, Fulbright & Jaworski, London, England (1981-82); Teaching Fellow, Department of Government, Harvard University (1980-81); Law Clerk, Shapiro, Israel & Weiner, Boston (1980); Summer Associate, Holme, Roberts & Owen, Denver,

Employment record—Continued

Colorado (1979, 1980); Research Director (1980), Special Assistant to Chairman (1979), Bailey, Deardourff & Associates, Washington; Research Assistant in Legal Policy, American Enterprise Institute, Washington 1978); Creator, Moderator, Producer, Lay It On The Line (WDSU-TV, NBC, New Orleans, 1973-74).

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Ross Essay Award, American Bar Association (1985); Who's Who in America; Harvard College — Phi Beta Kappa, Charles Joseph Bonaparte Scholarship (highest academic standing in Government Department at end of junior year), magna cum laude; Rotary International Fellowship (1981-82); U.S. EPA Special Achievement Award (1984).

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Toxics Law Reporter	Adv. Bd.	1987 -
Youth Service America	Bd. Mbr.	1988 -
Center for Strategic and International Studies	Adj. Fellow	1989 -
U.S.Army - Judge Advocate General's Corps./Reserve	1st Lt.	1987 -

Qualifications: State fully your qualifications to serve in the position to which you have been named.

I have a strong personal commitment to environmental protection generally, and to the role of vigorous enforcement in particular. I have spent most of my professional career in government, following the study of law and government. Having worked for William Ruckelshaus at EPA, I am familiar with the Agency and its regulatory process. I am also intimately familiar with environmental law, from my work at EPA, with the Senate Environment Committee, in private law practice, and from significant study and writing. Working at the Office of Personnel Management helped to provide additional managerial experience. My goal would be to do everything in my ability to help the outstanding EPA career officials meet the high expectations of our President, the Congress and the American people for vigorous environmental enforcement.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will have no connections with any previous employer.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

None.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not applicable.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I departed from EPA in 1985 to work for the Senate Committee on Environment & Public Works. I returned to EPA on detail from the US Office of Personnel Management in June 1989, to work as an Assistant to Administrator Reilly. As Acting Director of OPM, I departed upon confirmation of Constance Newman.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None.

3. Are any assets pledged? (Add schedule).

No.

4. Are you currently a party to any legal action?

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

Small stockholdings could present an appearance of a conflict, if matters involving such firms arise. After consultation with the Designated Agency Ethics Officer, I will either sell such stock listed on Form 278, or recuse myself from such matters.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

My previous environmental client relationships are listed on the Form 278. They each involved some degree of representation in dealing with the federal government.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I have attached a recusal document which is intended to resolve any potential conflict of interest, or even the possibility of a conflict.

5. **Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.**

I am seeking and will continue to seek the advice of Mr. Gerald Yamada, Designated Agency Ethics Officer, to avoid actual or apparent conflicts of interest.

Political affiliation and activities: **List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.**

I have held no elective office. As a registered Republican, I have been active in some campaigns, but have made no significant financial contributions to candidates of either major political party. In 1986, I drafted issue position papers for Norma Paulus, candidate for Governor of Oregon, and Linda Chavez, candidate for Senator from Maryland, as an independent consultant. I have done similar work, through Bailey, Deardourff & Associates, for Kit Bond for Governor of Missouri in 1980, and Ken Maddy for Governor of California in 1978. I also researched polling data and issues for the 1984 Reagan Campaign for President, as a full-time employee in September - November 1984.

Published writings: **List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)**

"Coming to Terms with the Compensation Conundrum", 71 ABA Journal 68 (September 1985); 57 Journal Water Pollution Control Federation 981 (October 1985); 131 Congressional Record S12001 (daily edition, September 25, 1985.

"Putting Our Habitat in Order: Environmental Priorities for the Next Administration," Policy Review, Number 45, p. 36 (Summer 1988).

"Settlement Policy Under the Superfund Amendments and Reauthorization Act of 1986," 58 University of Colorado Law Review 599 (1988); 3 Toxics Law Reporter 184 (July 1988).

"The Common Law Under Challenge: Politics, Science and Toxic Torts", in Schnare and Katzman (eds.), Chemical Victimization--Legal and Medical Uncertainties (Greenwood Pres, 1989).

(Continued)

"Adjusting Water Allocation Law to Meet Water Quality and Availability Concerns in a Warming World," in Proceedings of the First North American Conference on Preparing for Climate Change: A Cooperative Approach 382 (Government Institutes, 1988).

(Please see attached sheet for additional articles)

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

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2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

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AFFIDAVIT

______________________) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

James M Strock

Subscribed and sworn before me this day of , 19 .

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Notary Public

PUBLISHED WRITINGS CONT'D

"Superfund Amended: A New Emphasis on the Public Health," 16 Colorado Lawyer 1845 (October 1987); 2 Toxics Law Reporter 648 (November 1987).

"Effects of Global Warming on International Treaty obligations Relating to Water Rights," Proceedings of the Second North American Conference on Preparing for Climate Change: A Cooperative Approach (forthcoming, 1989).

Book Review: Michael Dore, Law of Toxic Torts, and Donald W. Stever, Law of Chemical Regulation and Hazardous Waste, 3 Natural Resources and Environment 43 (American Bar Association, May 1988).

"The Genesis of the SARA 'Innocent Landowner' Defense," 3 Toxics Law Reporter 592 (October 1988).

"The Congress and the President: From Confrontation to Creative Tension," 17 Environmental Law Reporter News and Analysis 10006 (Environmental Law Institute, January 1987).

"The Domenici-Simpson-Bentsen Amendments to H.R. 2005" (article on Senate amendments to Superfund concerning pre-litigation "settlement policy"), 10 Chemical Waste Litigation Reporter 743 (November 1985).

With David O. Ledbetter, Guest Editorial on Superfund Settlement Policy, 14 Chemical Waste Litigation Reporter 648 (November 1987).

"Citizen Service: What You Can Do For Your Entitlements," Policy Review, Number 48, p. 68 (Spring 1989); also interview in The Hotline, vol. 2, No. 103 (February 22, 1989), p. 22.

RESPONSES TO QUESTIONS FROM SENATOR LIEBERMAN

Q1. **Federal Facilities**

I am informed that recently a member of the EPA federal facility enforcement group published an article in which he appeared to be advocating that EPA emphasize conciliatory approaches with federal facilities rather than a tough enforcement approach. This article raised concern among those of us who believe it is time to take strong action to bring federal facilities into compliance and that the voluntary approaches are not always successful.

What is your strategy for ensuring that federal facilities comply with the laws? Do you support issuing administrative orders where necessary to ensure compliance?

A1. I firmly believe that federal facilities have an obligation to comply fully with all environmental laws and regulations in the same manner and degree as all other regulated entities. The Agency has a number of enforcement authorities that enable it to take a strong, aggressive approach to federal facility compliance. I would intend to use these authorities where necessary, including inter-agency agreements, compliance agreements and administrative orders, to insure a viable enforcement program against federal facilities. Such agreements and orders, once entered into, must be enforced if EPA is be effective. I would also be prepared to utilize criminal authorities to prosecute individuals, including federal employees or contractors, to redress willful violations of the law.

The Agency has established a process to ensure federal facility compliance that includes, although not as a first step, the issuance of unilateral administrative orders. The process varies with the law to be enforced. For instance, on August 10, 1989, EPA issued a Federal Facilities Negotiations Policy establishing a detailed process for negotiating CERCLA/RCRA cleanup agreements. For CERCLA cleanups, EPA negotiates an inter-agency agreement (or IAG). If the Agency does not follow the terms of the IAG, EPA can issue stipulated penalties and unilateral orders (with concurrence from the Department of Justice). Also, EPA can issue RCRA Section 3008(h) orders. Both of these types of orders can be issued to abate ongoing releases which may cause imminent threats. Where situations arise similar to those under CERCLA, in which EPA would issue orders setting out actions required for compliance, I would actively pursue such orders.

I am aware that the Congress and the Administration are currently considering the question of the applicability of administrative orders and penalties in federal facility enforcement. If confirmed, I intend to serve as an advocate for the use of any available enforcement tools to assure compliance, including administrative orders, in all situations where their use would be appropriate.

With respect to a strategy for compliance, it is important to note that while the Office of Federal Activities (which includes responsibility for OMB Circular A-106, NEPA, Clean Air Act Section 309 and other matters) has recently been moved to OECM, the greater part of the federal facility enforcement personnel reside in the media program offices. Whether or not those enforcement personnel also come within OECM, I intend to serve as an advocate for a strong enforcement presence in this area.

Q2. Reporting System

One concern frequently expressed with the enforcement process is that EPA's internal reporting system does not emphasize enforcement performance.

Have you examined the reporting system and do you recommend any changes to ensure that enforcement is reflected as a high priority within EPA?

A2. By traditional measures -- including levels of resources and enforcement activity -- enforcement has been a high priority within EPA the last several years and will continue to be a high priority of the Administrator, the Deputy Administrator, and myself. At the same time, I also agree with the thrust of your question, namely, that high "numbers" by themselves do not measure the "success" of the environmental enforcement program. The Agency must emphasize the achievement of specific environmental improvement as well.

Currently, the enforcement office's use of the concept of "significant noncompliance" (SNC) provides an indirect measure of the environmental benefits from enforcement actions. Each program area defines its most serious violations which are then closely tracked and assigned specific deadlines for resolving the violations. The SNC concept helps assure that the highest priority violations are addressed for each program area.

I would intend to go beyond the SNC concept and develop more direct measures of enforcement impact. In recent weeks the Agency has initiated, under the direction of the Deputy

The Administrator and Deputy Administrator have directed OECM to lead a comprehensive analysis of the federal/state enforcement program, the appropriate functions of various government entities, the definition of "success" for the overall enforcement effort, and how success can and should be measured. A major part of this effort will be to determine whether the Agency's Strategic Planning Management System can be adjusted to go beyond "bean counting" measures of enforcement performance to more sophisticated measures reflecting case quality and degree of environmental improvement as well.

Q3. Penalties

The EPA Inspector General has issued several reports in which he concludes that the regions are not documenting the bases for arriving at initial penalty figures and then are failing to document the bases for reducing penalties. The GAO reached similar conclusions. This lack of information makes it difficult for senior management to judge the success of the enforcement program or identify those areas needing improvement in the computation, negotiation and assessment of penalties.

Do you have specific proposals for addressing these criticisms?

A3. By way of background, Headquarters requires in its Civil Penalty Policy that all litigation reports contain penalty calculations which support the proposed minimum settlement amount. Existing guidance requires that all regional case files contain documentation of the reasons for any changes in the proposed settlement amount from the time the case is initiated until a consent decree is signed. In addition, Headquarters approval of judicial settlement amounts is required except under Superfund. The Headquarters enforcement attorney assigned to every civil judicial case monitors adherence to these procedures and to the penalty policy.

The Inspector General's report found that the Agency is not following its own guidance with respect to documentation of penalty calculations. To meet this challenge OECM intends to assure that case specific review of penalty calculations is included in litigation reports, and in memoranda recommending approval of consent decrees. Properly implemented, and supplemented by audits, this approach should be more comprehensive than the Inspector General's suggestion of "Quick Look Reports" based on less specific computer documentation.

For administratively-assessed penalties, OECM believes that selective case reviews as part of expanded media program office audits is the appropriate response. Such additional emphasis and increased oversight through periodic program audits should result in substantially improved penalty documentation. OECM, as well as several program offices, feels that such expanded program reviews strike an appropriate balance between available resources, necessary penalty oversight and measurement of real environmental achievement.

If confirmed, I intend to reemphasize to appropriate Agency enforcement personnel the need to fully adhere to all aspects of the Civil Penalty Policy and media program penalty policies. OECM is currently preparing an action plan to address the concerns raised in this report and, will prepare and send a memorandum to all Regional Administrators by the end of this month. The corrective actions identified in our overall action plan will be initiated by the end of this calendar year.

As a general matter, I wish to stress that, if confirmed, I intend that OECM work carefully to make the best possible use of reports by the Inspector General, the General Accounting Office and other outside observers. No doubt there will be some difference of opinion on occasion. But I would consider the interchange healthy, and hope to use such studies as tools to improve internal management.

Q4. Market-Based Approaches

As environmental regulation moves away from traditional command and control approaches to market-based laws, the Agency's enforcement program will have to be even more vigilant.

What changes do you recommend in the enforcement structure to reflect the need for increased vigilance under market-based programs?

A4. From my vantage point, an environmental law concept, no matter how theoretically attractive, can only be acceptable to the extent it is enforceable. Market-based systems present new questions, but I am confident that they can be enforced where they are based on clear permit and data monitoring requirements, effective penalties for violation of such requirements, and a vigorous enforcement program able to respond rapidly to the data it receives.

Several changes in emphasis in the government's enforcement structure would help assure effective enforcement of market-based programs. The regulatory system should include significant requirements for source owners to monitor emissions, report emissions, report trades in emission credits, and tally the effect of trades on allowable emissions. In turn, states and the federal government would need to maintain data systems to keep a registry of trades and their effect on allowable emissions. For market-based systems that impose emission fees, source reporting and emission data management will also be necessary to insure that the proper fees are collected. As a result, the enforcement structure should include a system to selectively audit and verify data that source owners submit. Management of enforcement data generally is one of the areas I would intend to focus on to improve overall enforcement effectiveness, and the potential for market-based programs makes attention to it even more urgent.

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